

EPISODES IN THE HISTORY OF THE HOBART GAOL,
c.1910-1955

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ABBREVIATIONS USED IN FOOTNOTES

ADB	Australian Dictionary of Biography
AGD	Attorney-General's Department
AOT	Archives Office of Tasmania
H.R.A.	Historical Records of Australia
M.H.A.	Member of the House of Assembly
SEM	Saturday Evening <i>Mercury</i>
PCS	Premier and Chief Secretary's Department
PD	Premier's Department

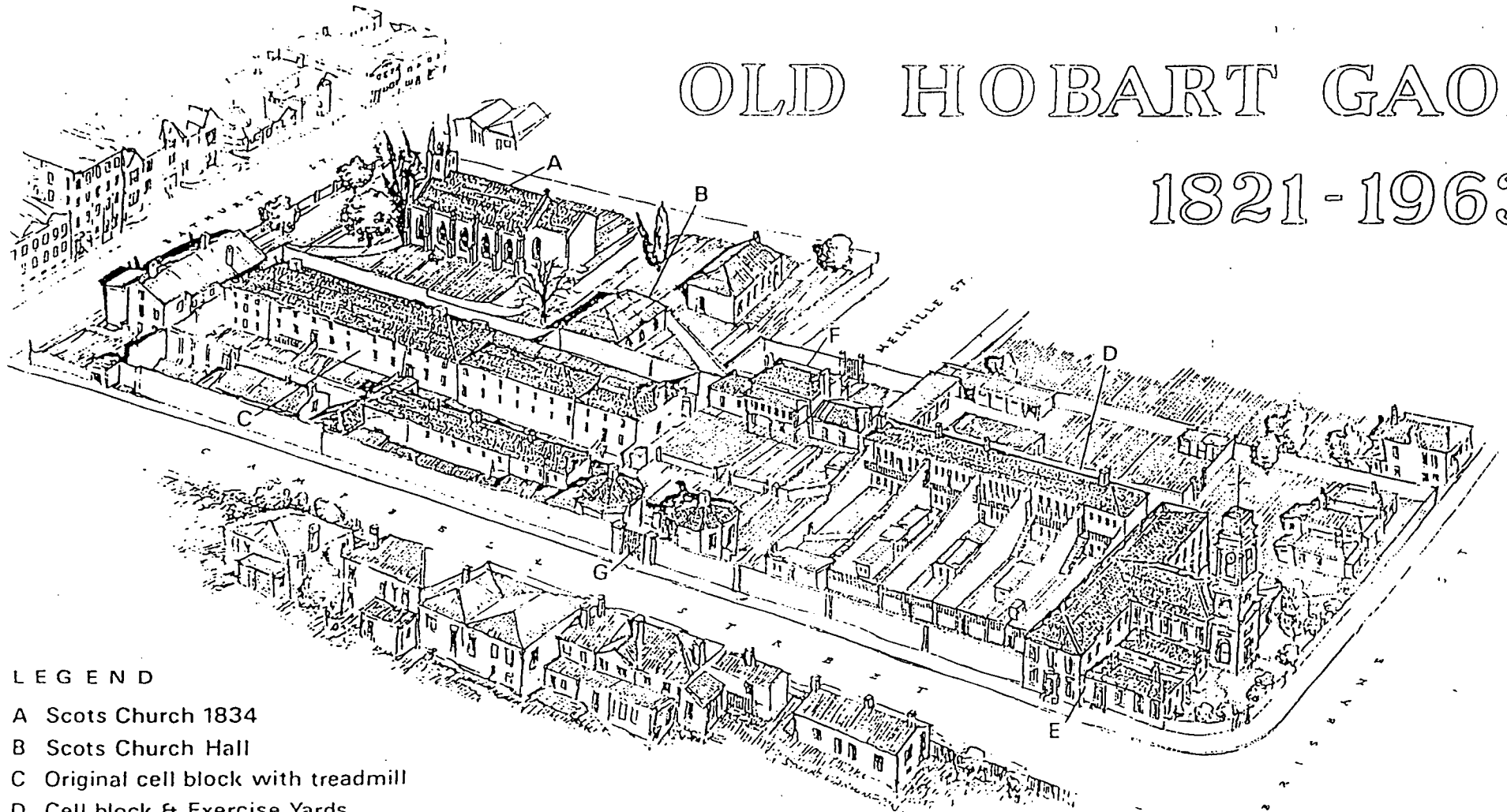
All other abbreviations apply to file numbers in the Archives Office of Tasmania.

CHRONOLOGY

1817	First Hobart Gaol built on the Corner of Murray and Macquarie Streets.
1857	Transfer of Murray Street Gaol to Campbell Street Gaol
1877	Closure of Port Arthur
1883	Report on Penal Discipline in Tasmania
1908	Stafford Bird Inquiry
1920	Mental Deficiency Act.
1925	Criminality and Intelligence: tests of Morris Miller's applied to inmates
1926	"Mayfair" (New Norfolk) investigated as a possible new site for the Gaol.
1935	Milbrook Farm considered as a site for a new gaol.
1935	Royal Commission into Escapes from the Hobart Gaol.
1937	Purchase of Kilderry Farm Estate for a gaol farm
1939	Gaol Riot
1943	Royal Commission into Escapes from Hobart Gaol
1956	Proposal for a New Gaol at Risdon

OLD HOBART GAOL

1821-1963



LEGEND

- A Scots Church 1834
- B Scots Church Hall
- C Original cell block with treadmill
- D Cell block & Exercise Yards
- E Old Trinity Church
Criminal Courts & Sheriff's Office
- F Governor's Quarters
- G Main Gates & Gatehouses

INTRODUCTION

The old Hobart Gaol's history spans some one hundred and fifty years: from 1813 to 1963 when the last female inmates were transferred to the current Risdon Prison.¹ During that time, its development as a gaol complex was haphazard and unplanned in the long term.

The oldest part, portion of the House of Correction (H.C. Building) was originally erected not as a gaol, but as a Prisoners' Barracks or Penitentiary. The gaol proper, was in Murray Street² opposite the Court House. The latter, "a miserable, small, ill-constructed brick building"³ was used by prisoners awaiting trial across the road at the Supreme Court or for those awaiting execution. The gibbet was so placed that it protruded above the 10 ft. high wall which ran around the gaol. Between 1824 and 1839, there were 302 people executed here, sometimes up to nine at a time.⁴ The gaol doubled as a Female Factory for female offenders up to 1827 when Thomas Lowe's Distillery at South Hobart was purchased and converted into a Female House of Correction.⁵ The Murray Street Gaol continued to be Hobart's Gaol until 1 January 1857, when the Campbell Street Penitentiary was proclaimed a Gaol and House of Correction.⁶

Additions and extensive alterations always needed to be made but these were done on an "ad hoc" basis. At Campbell Street, a new barrack for the accommodation of male prisoners was needed and in 1821, Governor Lachlan Macquarie was able to report that a "commodious" building was nearing completion. This would house up to 300 male convicts.⁷ However, this "barrack" was not intended as a gaol, but as a holding station for male convicts arriving from England by ship and waiting for assignment. It was also used by the government to accommodate public works gangs and loan gangs who had to sleep there at night.⁸

Further alterations were needed five years later. In 1826, a committee consisting of the Colonial Architect, the Superintendent of Public Works, the Superintendent of the Barracks and the Principal Superintendent of Convicts reported that another barrack was needed "at the further wing, fronting the gate

¹ 27 June 1963

² See Plate 1.

³ D. Burn, *A Picture of Van Diemen's Land*, (Hobart, 1973), p.44.

⁴ *S.E.M.* 22 June 1957.

⁵ National Trust of Australia, *Some Notes on the Early History of Hobart Gaol and Old Trinity Church*, (Hobart, 1963), p.1.

⁶ *Hobart Town Gazette*, 30 December 1856, p.1652. See Appendix A.

⁷ *H.R.A.*, I, vol 10, p. 699, Macquarie to Bathurst, 27 July 1822. (See Appendix B.)

⁸ National Trust, *op. cit.*, pp.2-3.

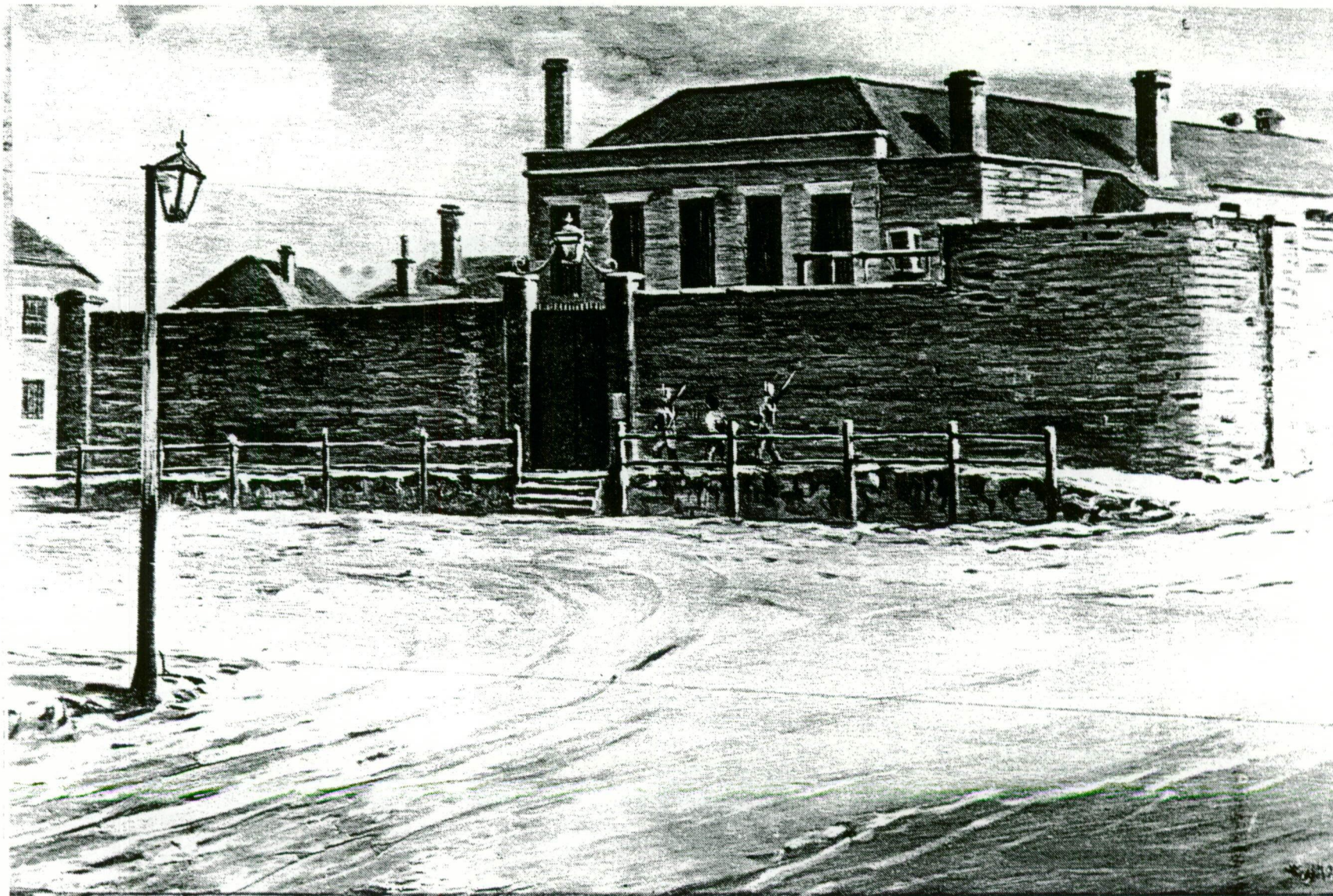


Plate 1 Colonial Hobart's gaol, corner Murray and Macquarie Streets. Built 1814-18, abandoned 1857.
(Tasmanian Museum collection.)

Reference: R.J.Solomon, *Urbanisation: the Evolution of an Australian Capital*, (Sydney,1975), p.66

and extending in a line to the Superintendent's quarters."⁹ This would accommodate another 640 men primarily engaged in public works.

Internal alterations were also needed. In 1827, the Principal Superintendent reported that a further twenty to twenty four cells and a lock up room for country convicted persons was needed.¹⁰ From these statistics, it can be deduced that the Barracks were no longer being used simply as sleeping quarters for convicts. The need for more convict cells was all the more urgent as the Female Factory had still not opened to take female offenders from Murray Street. By 1841 approval had been given for the construction of 33 new cells.¹¹ The numbers of men held in the Barracks and the House of Correction was nearly 1000.¹² Further alterations in 1859 cost £1750.

Having a gaol situated within the city boundaries was not unknown, but where a city had been planned, such as Hobart was, questions concerning its placement and reasons for its construction, need to be asked. There are several reasons: firstly, the unpredictable but obvious development of Hobart from a prison colony to a flourishing free colony very soon placed the site of the Campbell Street Gaol in the middle of an expanding metropolis: Sprent's map of 1841¹³ shows the Gaol no longer discretely at the village of Hobart Town but very much in the middle of town. Even by 1839, the town boundary had been pushed as far north as Burnett Street and the village of New Town, further out, had many "tasteful" residences of "the wealthier merchants, government officers and professional men."¹⁴ The bureaucracy could not have predicted nor even imagined the objections by the turn of the century that the Gaol had become "an eyesore", a constant reminder to the citizens of their convict past, and, with the frequent escapes of the inmates, a danger to themselves.

A second theme which runs in the background of this study of the Hobart Gaol, is the nineteenth century view of penology: Reformers believed, by the end of that century, that gaols should be quite separate institutions to the Houses of Correction. The Penitentiary in Campbell Street had been set up after 1857 with the idea that time there should be thoroughly unpleasant, with "hard labour", "possibly on a treadmill."¹⁵ In addition to hard labour, reformation of the individual through "religious education and moral

⁹ *Ibid.*, p.3.

¹⁰ *Ibid.*, p.7.

¹¹ Fig. 1.

¹² National Trust, *op. cit.*, p.9.

¹³ See Appendix C.

¹⁴ R. J. Solomon, *Urbanisation: the Evolution of an Australian Capital*, (Sydney, 1975), p. 48.

¹⁵ A.G.L.Shaw, *Convicts and the Colonies*, (London, 1966), p.132.

HOBART GAOL.

- Presbyterian
School Room

MELVILLE
STREET

Superintendent

PAVED YARD

Trinity Yard

Chapel	Yard,
--------	-------

CAMPBELL STREET.

Fig. 1. Additions to the Cambell Street Gaol, 1841. Reference: National Trust of Australia (Tas.), *Some Notes on the Early History of Hobart Gaol and Old Trinity Church*, (Hobart, 1963)

training"¹⁶ was necessary. Selected prisoners could serve their sentence in these carefully controlled conditions and ideally be returned to society, reformed individuals. By the end of the century, the treadmill concept had been replaced by a trade: bootmaking, carpentry, blacksmithing. Borstal prisons were set up to take in adolescent offenders in the hope that by concentrating on their special needs, psychological and physical, they too could be rehabilitated and returned to society.¹⁷

On the other hand, there were the criminals. The nineteenth century view of these can clearly be seen in the 1883 Report on Penal Discipline in Tasmania. Their treatment, no matter what the term of their sentence in gaol, included solitary confinement, single cells and exclusion from human contact except at work and in exercise yard.

Placed in this monotonous position, and reduced to the lowest authorised scale of prison diet, the criminal is thrown up on thoughts of the past and the penalty he is paying for his crime, and may therefore be expected (especially if religious influences are brought to bear up on him) to realise past errors and enter upon good resolutions for the future.¹⁸

The years 1910-1955 see dramatic developments in the treatment of the prisoner. No longer is he viewed with contempt and fear, but with understanding and compassion.

Another concern of the reformers, allied to the above, was the lack of segregation of the prisoner types - those on remand and the hardened criminal were not separated, nor was the adolescent offender from the mental defective. Segregation as a policy even in the nineteenth century was well documented,¹⁹ but in practice, this was not effected. Further reform was seen to be necessary in the classification of prisoners according to their age and mental state, not just their offence. Moreover, by the late nineteenth century, the new tide of public morality demanded that society care for the insane and the young offenders, not simply shut them away and forget them.

The adoption of many of these reformative measures was hampered by the physical structure of Campbell Street. Early this century, attention was turned to an alternative site, preferably in the country: Maria Island, Ross, Claremont, New Town and Kingston were all suggested. The philanthropists

¹⁶ *Ibid.*

¹⁷ R. Hood, *Borstal Re-assessed*, (London, 1965), pp.1-22.

¹⁸ *Royal Commission on the State of Penal Discipline in Tasmania*, 1883, p.3.

¹⁹ *Ibid.* p.14.

claimed that whilst administrators were ready to adopt reform at the gaol, they were hampered by the dilapidated building on an urban site.²⁰

Other concerns which ran through the gaol's history were the strong beliefs that the gaol should not be a drain on the public purse. As far as possible a gaol should be self sufficient²¹ and any alterations should be carried out with prison labour.²² With the employment of master builders and craftsmen, the prisoners could offer their services free, thus saving the governments of the day huge expenses in their budgets.

These nineteenth century ideas and practices form a background to the study of the Hobart Gaol from about 1910 to 1955. The focus is on a number of specific episodes which captured the attention of the public at large. These episodes or events follow in the main a chronological order, although the investigation of public enquiries spans the full forty years.

The research on the gaol has largely been gathered through official records although it must be noted that at least three parameters place some limitations on the scope of such a study: firstly, the fire which occurred at the Risdon Prison in 1967 substantially destroyed many of the Gaol records before they were transferred to the security of the Archives Office of Tasmania. Whilst the official records are still available from the Government departments such as the Attorney-General's Office and the Premier's Department, the records of the day books of the warders are incomplete. These often gave a different version of events.

The second restriction is the prohibition of release of the personal prison records of past inmates so placed by the Department of Corrective Services. This restriction altered the direction somewhat of this study and the real value of some of the rehabilitative reforms such as parole, must wait for a later study.

A third limitation should be noted. Whilst the value of oral history cannot be denied, the accuracy of recall of detail of the now elderly interviewees must be questioned. Some naturally choose to recall the benign or the "popular" view of the gaol, expressed in the press at the time. These embellishments must be taken into account when recording eyewitness accounts of a bygone institution with all its sensitive overtones.

Four episodes have been chosen for study: the deserted wives question of the 1920s; the mental survey of the inmates of the Gaol in 1925; the many attempts to remove the gaol from Campbell Street to rural locations and build a

²⁰ *Ibid.* p.4.

²¹ e.g. *Annual Report of the Controller of Prisons, 1937*, p.2.

²² *Parliamentary Standing Committee on Public Works: Report on the proposed Remodelling and Reconstruction of the Hobart Gaol, 1915*, p.3.

reformed, modern prison; and the many public enquiries into the operation and management of the gaol.

A full history of the gaol remains yet to be written. It is one of the few remaining public institutions in Hobart without a history. Attention of historians and interested bodies in things historical, have tended to focus on the nineteenth century aspects of architecture²³ or on capital punishment.²⁴ Issues of the twentieth century tend to have been overlooked or perhaps set aside because of difficulty in gaining access to complete files. The old Hobart Gaol is certainly worthy of such a study.

²³ B. Rieusset, *Penitentiary Chapel*, (Hobart, 1993).

²⁴ R.P. Davis, *The Tasmanian Gallows: A Study of Capital Punishment*, (Hobart, 1974.)

I

REFORMIST CONCERNS FOR THE HOBART GAOL, ITS INMATES AND PRISONERS' DEPENDANTS, 1910-1925

In 1908, a Parliamentary Report on the Prison System and the Internal Management and Working of Tasmanian Gaols²⁵ was introduced into the Tasmanian Parliament by the Honourable B. Stafford Bird, M.H.A. In so many ways, it encapsulates the different issues that were raised over the Hobart Gaol in Campbell Street between 1910 and 1955. In addition, it reflects the changing attitude of Society to penology. Felons were not imprisoned to be just punished, but they could be reprieved and rehabilitated back into society as useful citizens.

Bolton Stafford Bird had formerly been a Congregational Minister who later took up farming in Geeveston²⁶ and Bruny Island.²⁷ He was a member of the House of Assembly until 1908 and then a member of the Legislative Council until 1923. During his Parliamentary career, he had held various portfolios of Treasurer, Postmaster-General and Minister for Education and Railways in a number of different administrations.

Both he and his wife took a kindly and paternalistic interest in the people with whom they came in contact.²⁸ Their lives had been "an open book to the public ever since Mr Bird and I set forth in Tasmania" his wife wrote to Premier, Sir Elliot Lewis in 1910.²⁹ Both of them had taken an interest in the prisoners in the Campbell Street Gaol. Mrs Bird believed that she was "following in 'The Master's Footsteps'" in conducting a church service every Sunday "for the uplifting and ennobling, collectively and individually of my unfortunate brothers and sisters."³⁰

Although Mrs Bird had been working in the prison since 1898, it would seem that after ten years she had overstepped her Christian duty by the reaction of the prison authorities. In 1906, she was banned from conducting her church services because she had been inciting the prisoners to be insubordinate to the prison warders. "There has been a marked improvement in this respect during the last two years as a consequence of her absence" wrote Sheriff Ross to the Attorney General in December 1908³¹, just one month after her husband

²⁵ *Report on the Prison System, and the Internal Management and Working of Tasmanian Gaols, by the Hon. B. Stafford Bird, M.H.A., 1908.*

²⁶ D. Pike, *Australian Dictionary of Biography*, vol. 3, (Melbourne, 1966), p. 165.

²⁷ *Mercury*, 16 December 1924.

²⁸ A.H. Garnsey, *The Romance of the Huon River*, (Melbourne, 1947).

²⁹ Letter from Mrs Bird to Sir Elliot Lewis, 26 September 1910, P.D. 1/223/81.

³⁰ Ibid.

³¹ Letter from Sheriff Ross to Attorney -General, Mr A. Solomon, 21 December 1908, P.D. 1/223/81.

placed his report before the Parliament. Stafford Bird was one who was not afraid to express his opinion, especially when the government had refused to investigate the condition of the Campbell Street Gaol. He undertook to finance the report himself "so that the expenses attendant on the proceedings of a select committee might be avoided."³² The impetus for the report came from the refusal of the lower house to agree to a proposal submitted to Parliament for the erection of a new gaol at Derwent Park. Because of his involvement with the gaol, together with the work carried out by his well-meaning wife, he hoped to effect a number of reforms which would improve the management of the new gaol.³³ These reformatory measures included the classification and segregation of prisoners. This would mean structural alterations to achieve better cell accommodation. Insufficient daylight and poor sanitation were two problems itemised. In addition, the ratio of prison warders to prisoner was questioned, suggesting that better internal organization of the gaol would reduce costs of maintaining this institution.³⁴ Economy of operation was to be constant catchcry of politicians and prison administrators over the next forty years.

Another issue Stafford Bird raised was the need to occupy the prisoners usefully. Prisoners' characters could be reformed by the frequent visits of the chaplains and clergy of the different denominations. In addition, the supply of all kinds of literature was calculated to aid mental and normal improvement.³⁵ However, the poor lighting in the cells prevented any prisoner who thought he might improve himself, by reading, in the time allocated between the evening meal and bed time. Reform needed to be undertaken for juvenile offenders in particular. Stafford Bird's concern was the inadequate elementary education given to young prisoners by one of the better educated older prisoners. What would be better for the young prisoner would be if a state school teacher should visit the gaol daily.³⁶ This would achieve better results among a greater number. Stafford Bird supported the innovation of showing educational films to the prisoners. This practice was to continue over the next four decades but structural changes needed to be made to achieve greater success.

Another issue which was to be debated for the next forty years was the need to relocate the gaol to a rural setting where the prisoners could be engaged in profitable "agricultural or horticultural" employment.³⁷ Only a few of the

32 *Report on Prison System*, 1908, p.1.

33 *Ibid.*, pp. 1-2.

34 *Ibid.*, p.2.

35 *Ibid.*, p. 1.

36 *Ibid.*, p.2.

37 *Ibid.*

prisoners worked outside the Gaol in the Botanical Gardens, Government House gardens or a quarry on the Domain. A new gaol, with sufficient arable land, would widen the range of jobs currently undertaken inside the gaol, such as tin smithing, mat making and baking.

Concern over gaol costs and the burden on the public purse was another issue raised in the 1908 Report. Each Annual Report for the Gaols (including Launceston) gave a costing on the upkeep of prisoners, income generated by gaol industries and costs of upkeep on the goal buildings. Stafford Bird pointed to errors in the book keeping records of the prison reports.

In the carpentry branch, the estimated earning are set down as £363.1.4 representing 2073 days' work at 3s 6d per day. But when the cost of material and wages paid to the master carpenter are set against the receipts or value for the goods produced, there is only a net gain of £19.4s.4d. shown as the actual result of 2073 days' labour, or only a trifle over 2d per day per man.³⁸

Bird supplied similar evidence of inefficiency and poor financial return in bakery, mat making and weaving and bootmaking, the main gaol industries, and concluded that:

While it is in no doubt a good thing for men to be employed in such industrial pursuits, it is much to be regretted that the financial results of their labour contribute so little towards the expense incurred by the State in maintaining them.³⁹

His report brought to light the need to provide for the wives and children left destitute when the breadwinner was imprisoned. Existing charitable aid was in many cases, insufficient and haphazard. Stafford Bird's demand for the State to maintain the families of prisoners was to anticipate the vigorous work undertaken by Mrs Edith Waterworth and Mrs J. Downie in a decade's time, in particular, that destitute women had equal rights as men did and their plight should be of concern to everyone.

Another reform needed was to consider the possible early release of well-behaved criminals onto parole. Not only would this be personally rewarding but again, from the point of view of economy, would relieve the State of the costs of maintaining a prisoner of the Crown:

³⁸ *Ibid.*

³⁹ *Ibid.*

All the good that is to be effected by the imprisonment of criminals is, in many cases, secured long before the full term of their sentence has been served.⁴⁰

The Prison Act of 1868 had set out that visiting Justices should examine the "treatment, behaviour and condition" of prisoners.⁴¹ Now Bird was advocating they could, together with the gaol chaplains, determine whether a prisoner was ready to be trusted with release on parole. Parole was to become an incentive, particularly in the 1930s onwards, with an organized aftercare service run by the City Mission and the Prisoners' Aid Society. These after care organisations also assisted with clothing, tools and temporary housing. Stafford Bird's Report pointed to the need for assistance here and in obtaining employment for the paroled prisoner, if he were going to be rehabilitated back into civilian life. In 1908, Bird saw that reform was needed in the way of thinking of prison officials and of society at large about prisoners "to help them to a good start on their release from gaol."⁴²

It is due, both to the prisoners themselves and to the community at large, that all the State can do should be done to assist those who have fallen under the lash of the law to rise to the better life of good and law abiding citizens.⁴³

"Assistance" and "better life" were the focus of two other reformist groups in the 1920s- the middle class women's philanthropist lobby, led by Mrs E. Waterworth, and the progressive academics, led ably by E. Morris Miller, keen to apply new methods of classification to the prisoner for his long-term benefit.

* * *

The issue of prisoners' wives and their dependants became a concern after World War I. The reasons are not clear but two main surges of reform can be identified: the philanthropic work of the middle class took on a new energy and purpose, thanks to the publicity given to the work of individual women such as Mrs Edith Waterworth, of the Women's Health Association (WHA) whose personal column in a local Hobart paper drew attention to women's

40 *Ibid.*

41 Prison Act, 1868, p.265.

42 *Report on Prison System, 1908*, p.3.

43 *Ibid.*

issues. Other influential women were the wives of prominent businessmen or bureaucrats, such as Mrs L. Giblin and Mrs T. Murdoch.

The other influence is the shifting values of post war society. The new freedom and responsibility assumed by women in World War I was not completely relinquished, although there is some debate among historians⁴⁴ as to the extent of that social adjustment after the war. That is not the issue here. What is significant is that women were more vocal and driving for more changes in politics, female representatives in parliament, more equality for women in society's makeup and a very real belief that women bore the responsibility of society's successes and failures equally with men:

It is their greatest pride that they are treated as equal burden-bearers with men, and they hand on the tradition to their daughters.⁴⁵

This demand for equal opportunity and fair treatment of women came through strongly in the evidence, tendered by the matriarchs, Waterworth and Downie for the Matrimonial Causes Bill of 1919. That these women could draw attention to the plight of their sisters and again, even more forcefully in the delegations to the premier in 1924 by Mesdames Waterworth, Giblin and Murdoch, is interesting. Stefan Petrow⁴⁶ suggests three changes had come about in the early twentieth century that emboldened women to take such actions.

Firstly, women had become more organized this century.⁴⁷ Although middle class women had always done good works, visited the poor, helped the needy, donated food and clothing to the destitute, they had never formed formal bodies. In the early twentieth century, associations such as the National Council of Women (formed in 1899) coordinated the many other women's organizations that had sprung up.

The second change which gave Tasmanian women confidence to voice their concerns over women's issues was their enfranchisement⁴⁸ achieved in 1903 without any violent demands or actions. In some electorates, the women had power by sheer force of numbers, outvoting their male counterparts. From 1918 onwards, they demanded their right to enter Parliament, where they could

⁴⁴ e.g. M.Lake, "Divisions and Alignments in the Tasmanian Community During the Great War," *Tasmanian Year Book* 1977, p.24.

⁴⁵ *Mercury*, 6 December 1923.

⁴⁶ S. Petrow, "The Furies of Hobart: Women and the Tasmanian Criminal Law in the Early Twentieth Century", (Hobart, 1993), p.2.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

the more easily effect reform. Mrs Alicia O'Shea Petersen had tried unsuccessfully to enter Parliament as early as 1911, standing to represent the interests of women and children as well as broader issues.⁴⁹ The press of the day, however, was not ready for women members of parliament and Petersen was trivialised in the press.⁵⁰ Mrs Waterworth tried unsuccessfully to gain a seat on a similar platform in 1922. She focused on the rights of deserted wives, widows and children.

The third change which Petrow mentions as giving impetus to women's issues is the social consequences of World War I,⁵¹ Women took up all kinds of work hitherto regarded as "the absolute right of men" the *Mercury* argued in 1917⁵² but some doubt is cast on this assertion. If there is no agreement among historians that women demanded traditionally-held male jobs, then certainly the loss of lives in World War I left many women without a breadwinner. Moreover, those men who did return from the front, were injured, physically and mentally, and were either unable or unfit to work. Desertion became common place. T.E. Long, the city missionary in Hobart, said he visited eighty to a hundred cases of distress in Hobart alone, every month. The prime cause for their desertion was finding their wives in adulterous relationships with men whom their wives had sought as a replacement breadwinner.⁵³

Whatever the driving force, prisoner's families became one of the issues of the Committee on the Matrimonial Causes Amendment Bill of 1919. Strong in the defence of deserted women whose husbands were serving prison sentences, the Women's Health Association and the National Council of Women (NCW) put their case. Such organizations were made up of women from the middle classes who took the social injustices of the day to heart. Philanthropic work was the accepted norm for such people: their counterparts in Britain undertook such work.⁵⁴

In addition, the local newspapers, such as the *Mercury*, ran special columns for women. Some were devoted to social chatter and recipe dissemination, but others, spoke of the responsibility of women to endeavour to better society. Edith Waterworth was one such Columnist, writing under the pseudonym of "Hypatia" and perhaps, at a later date, "Cornelia." In these columns, she not only gave out sound advice on children's milk, colds, sex,

⁴⁹ H.Radi, *200 Australian Women: A Redress Anthology*, (Sydney, 1988), p.80.

⁵⁰ *Ibid.*

⁵¹ Petrow, *op.cit.*

⁵² *Mercury*, 10 November 1917.

⁵³ *Report of Select Committee on the Matrimonial Causes Amendment Bill, 1919*, (No. 26), p.10.

⁵⁴ A. Alexander, "The Public Role of Women in Tasmania, 1803-1914", (Hobart, 1989), p.316.

and myriad of ailments and cures, but she soundly condemned the government and social institutions of the day on their unfair treatment of the sexes.

Accordingly, the Select Committee appointed on 6 November 1919 heard evidence from the heads of several denominations, the Chief Justice of Tasmania Mr. Crisp, Magistrates, the Secretary of the Law Society, Mr. A.V.Giblin, the Medical Superintendent of the New Norfolk Mental Diseases Hospital and representatives from two women's groups, Mrs. E.Waterworth, Secretary of the Women's Health Association and the Child Welfare Association and Mrs J. Downie representing the National Council of Women. The prime concern of the Committee was whether the two sexes should be placed on an equal footing as regards the grounds for divorce. The current status in 1919 was that adultery alone was sufficient cause for divorce on the man's part, but on the part of a woman, cruelty or desertion coupled with adultery had to be proven. Despite the opposition from both the Roman Catholic and Church of England denominations, on the grounds that a sacred rite cannot be changed by a civil procedure edure, nor was it desirable that divorce be seen as "an easy option", the Committee did favour reform.

Sentence for crime as grounds for divorce was not as clear cut as the more obvious reasons such as desertion, habitual drunkenness, lunacy and violent assault. This was because there were a number of men in prison who looked forward to rejoining their children at the end of their sentence.⁵⁵ On the other hand, evidence suggested that there were "many cases where the character of the prisoner and the nature of the crime make resumption of married life impossible, and in such cases the free husband or wife should be able to sue for divorce."⁵⁶

In her evidence, Mrs. Waterworth stressed the need for the equality of the sexes in the issue of adultery, but surprisingly held to the more traditional, if not patronising view, that if one's husband was in gaol, then a wife should "stick ...to him through thick and thin" because this was "often the man's only hope of salvation."⁵⁷ She agreed with Mr. Snowden, a Committee member, that reforms such as the equality of the sexes and imprisonment being grounds for divorce would bring about "a more wholesome condition in public morality".⁵⁸ However, she implied that reforms such as these would be achieved much faster if there were "some women in the House to debate these questions" because she had "great faith" in her sex.⁵⁹

55 *Report...Matrimonial Causes Bill, op.cit.,p.3.*

56 *Ibid.*

57 *Ibid.*, p.13.

58 *Ibid.*, p.15.

59 *Ibid.*

In marked contrast ,on the other hand, Mrs. J.Downie, a delegate of the National Council of Women, had very little to criticise and did not wish to support any movement which would make divorce easier, though she did support equal rights for men and women.⁶⁰

Other witnesses included Mr. Walter O. Wise, Registrar of the Supreme Court, who advised that a woman should not be "compelled to live with a man who had been sent to prison after being convicted of a crime"⁶¹ Likewise, Mr. A Giblin, Secretary of the Southern Law Society agreed strongly that imprisonment be grounds for divorce on condition that the spouse was imprisoned "over a long period of time".⁶² Mr E.W.Turner (Police Magistrate of Hobart) wanted the term "convictions of crime" clarified to mean:

the man who had become a habitual criminal; the man who is always before the court, who is no good to his wife and who she does not think is worthwhile for her own sake and for that of her family, keeping on with any longer.⁶³

Mr. A.J.Taylor, librarian of the Tasmanian Public Library, spoke of his "considerable experience of the inmates of the gaols" and in his evidence recounted "an experiment" which he conducted during a concert he was giving at the gaol. He played a number of phonographs for the prisoners and noted their responses. They "laughed their sides out" at "Stop that Tickling Jock", but wept visibly when he played, "Daddy, I Have You and You Have Me". He took the opportunity to sermonise to the prisoners, saying, "The children you have, but the children have not got you." He advised them that when they were released, they should pull themselves together, be good fathers and good husbands, and "to keep out of gaol for the kiddies' sake."⁶⁴

Mr. Justice Ewing gave his advice regarding the proposed Bill. He said a similar one had been before the Western Australian Parliament some twenty years previously and divorce had been favoured under certain intolerable circumstances, one of them being imprisonment of one's spouse over some time. He was critical of the protestant churches' stand on divorce, given that it seemed hypocritical to stand in judgement in 1919 when Henry VIII had obtained his divorces from his many wives when he had become tired of them. ⁶⁵ He urged the Committee to be forward thinking and not be

⁶⁰ *Ibid.*, p.16.

⁶¹ *Ibid.*, p.19.

⁶² *Ibid.*, p.22.

⁶³ *Ibid.*, p.25.

⁶⁴ *Ibid.*, p.44.

⁶⁵ *Ibid.*

dogged by scriptural reasons but to think in the best "interests of society"⁶⁶ Here he drew on his personal experience as a judge. A father, absent because of imprisonment for any length of time is "disastrous to good social conduct and to the future of children."⁶⁷ He took the side of a woman in a situation where she had sought an adulterous relationship in order to support her children - all this as "a direct result of a narrow-minded and dogmatic view"⁶⁸ of society.

Children became the centre of concern of Mrs. Waterworth when she stood for Parliament in 1923. Women had been granted permission to stand for Parliament two years earlier. Mrs. Waterworth stood on a platform of the rights of deserted wives and their children as an Independent endorsed by the Women's Non Party League. She polled less than 6% of the vote.⁶⁹ In that same year, the Labour Premier, the Hon.J.A.Lyons, met and heard a deputation from the WNPL headed by Mrs. Waterworth and three other formidable reformists, Mrs.J.Edwards, Mrs.Giblin and Mrs. T.Murdoch. The women pressed their case that the question of deserted wives and their children had been set aside for too long and it was time the government took on its responsibility of caring for these women in two possible ways: firstly, by paying them a deserted wife allowance equal to that received by foster parents, and secondly, by forcing the deserting breadwinner to face up to his responsibility and support his family.⁷⁰ This could be done in a number of ways. His wages could be garnisheed or the state could pay for his extradition back to Tasmania to face charges of desertion. Mrs. Waterworth cited cases where children were living on bread alone or were "being brought up, begging from door to door for the necessities of life."⁷¹

Mr. Lyons, the Premier, heard them sympathetically, and agreed to their demands. He went further, and forecast that prison reform should be enacted to deal with deserting husbands. He felt that the government "ought to be able to put some of these gentry onto work which would be productive and profitable to the State so that they would repay some of the money spent on the support of their children".⁷² He believed that if the government could oblige these men to work out their responsibilities, then the government would be in a better position to deal with another problem, widows and orphans.⁷³

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

69 Radi, *op.cit.*, p.95.

70 *Mercury*. 16 November 1923.

71 *Ibid.*

72 *Ibid.*

73 *Ibid.*

The Premier was supported by the Attorney-General, the Hon.A.G.Ogilvie who was able to cite 700 or 800 desertion cases in the last eight years where "women with children clinging to their skirts had come to his office not knowing where the next meal was coming from or where they were going to sleep that night."⁷⁴ He was more realistic in his views than the Premier because he could see that garnisheeing wages would simply lead to the men changing employment and addresses.⁷⁵

Eventually, the Deserted Wives and Children's Bill became law. Further work was done for children's rights with the passage of the Children's Charter in 1922. The needs of the child in the "new age of chivalry"⁷⁶ were kept before the public. To reformers, this interest was "the awakening of a new sense of honour...a new spiritual growth in men and nations."⁷⁷

Another select committee reported on Charitable Assistance to Mothers in 1928 and found that the concerns of Mrs. Waterworth in the discrepancy of payments to deserted wives and to foster parents, still existed. In fact the deserted wives only received half of the allowance for foster parents. The select committee made some basic recommendations: firstly that there was to be a fixed minimum standard of comfort in the home, and where this fell short, the Charitable Grants Department would produce the shortfall. Secondly, where the breadwinner was gaoled or absent, the mother, if she was forced to stay at home to look after the children, should be paid by the government for loss of income.⁷⁸

The work of the women's associations in the two decades between 1910 and 1930 did much to being the public's attention to the plight of families left destitute after the father had been imprisoned. Hitherto, such families had existed on the handouts of charities, now it was seen to be society's responsibility to look after these unfortunates. By 1919, these women groups had sufficient influence to be consulted by government authorities as to their opinions on family matter. From the women's point of view, public awareness, perhaps even reform could come through political means, preferably with themselves as members of Parliament, but if this was not to eventuate, then they could lobby the male members of Parliament. With strong leadership in individuals such as Mrs. Edith Waterworth and with better organization within their groups, the middle class women's organizations were a powerful force for social change.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, 11 August 1922

⁷⁷ *Ibid.*

⁷⁸ *Report of Select Committee on Charitable Grants to Mothers*, 1929, p.3.

The 1920s was a period of confusion as far as the identification and treatment of mental disorders within the community. People still regarded mental disease with suspicion and fear. Those diagnosed as "insane" were locked away from society, not for their own benefit but for the safety of others. Tasmania's mental asylum was well away from mainstream thoroughfare, in the quiet village of New Norfolk. Ignorance lay at the base of these fears:

The ignorant ... public thought that psychology was something to do with hypnosis at best, snake-charming at the worst, as Albert Ogilvie was once astonished to be asked at a meeting.⁷⁹

The press tried to explain the brain's functioning as little doors opening into chambers, very much like a house. The brain had a "front" mind and a "back" mind⁸⁰ with a door between which was open or shut according one's mental state. The press also tended to sensationalise stories about mental asylums. Much was pure fabrication, or at best, the truth exaggerated. Stories of maladministration, even cruelty, were carried out on patients, all in the name of education for the medical fraternity. In Melbourne, doctors were reported to have extracted teeth from mental patients without anaesthetics, so that they could demonstrate the use of surgical instruments to nurses.⁸¹ Such malpractice was justified by the medical authorities as making the patient safer so that clothes would not be torn and forced feeding could occur.⁸² Other patients were treated little better than animals, using straw as bedding, straight jackets, no heating and locked cells.⁸³

Government officials of the period took on a paternalistic attitude to the insane. Typical was J. Allan Guy, later Chief Secretary of Tasmania, who claimed that those in possession of all faculties, particularly those in "high positions... must regard their greater endowments as gifts held in trust for the good of all men"⁸⁴ Moreover, men in positions of influence should use their superior intellect and "win the co-operation of those who are not able to

⁷⁹ J. Reynolds and M. Giordano, *Countries of the Mind*, (Hobart, 1985), p.78.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, p.76.

⁸² *Ibid.*

⁸³ *Ibid.*, p.77.

⁸⁴ J. A. Guy, "View of Deviates", in *Introduction to Brain Capacity and Intelligence*, (Hobart, 1926), p.4.

appreciate all the difficulties in the way of realising (the insanes') claims and demands."⁸⁵ He stressed that a true democracy was one where the "well-endowed" were never "amassed in opposition to those of less degree."⁸⁶

As far as understanding the workings of the mind of criminals, studies had begun in the late nineteenth century with the Italian criminologist, Cesare Lombroso. His work lead him to believe that criminals could be diagnosed because of their physical attributes. He was also instrumental in instituting more humane treatment of criminals, given that they had criminal makeups from birth.⁸⁷

In addition, there is evidence to suggest that there were many international conferences being held at this time in "criminal anthropology." These coincided, indeed may have prompted, many of the changes in the prison systems, particularly in the segregation and treatment of imbeciles, as distinct from other prisoners.⁸⁸

An attempted assassination of Theodore Roosevelt prompted concerned Americans who were interested in criminal behaviour, to write to the Governor of Tasmania, Sir Harry Barron in 1912. The Tasmanian Government was strongly advised to set up a laboratory with the specific purpose of investigating "criminals and other dangerous abnormals":

...by such study of dangerous, unbalanced and often illusioned people... their eccentricities and peculiar behaviour...can be determined to such an extent that we may detect them in advance. At present it is almost impossible to do this, because of little or no knowledge concerning them."⁸⁹

It was pointed out that governments were willing to spend revenue on the scientific investigation of "little bacillus, causing the death of plants or animals, but little or nothing [was] given for a similar study of the larger human bacillus."⁹⁰ This latter remark is another indication of how society in the early twentieth century tried to grapple with the causes of criminal behaviour and the commonly held belief that our society would benefit with a "thorough scientific investigation" into criminals and other defectives who were "social bacilli".⁹¹

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Encyclopaedia Britannica*, vol.7, (Chicago, 1988),p.455.

⁸⁸ A. MacDonald,"Study of Man", P.D. 1/248/81.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

It was at this time, in April 1913, that Edmund Morris Miller arrived in Hobart to take up a position as a philosophy and economics lecturer at the University of Tasmania. He was a man of many talents and broad interests. He was a close friend of Alfred Deakin, a supporter of Federation, a Nationalist and a librarian. His pragmatism, enlightened views on many subjects and his energy earned him a place with the other "Progressives" of this period.⁹² His interest in Kantian philosophy lead him to state on a number of occasions that active citizenship should embrace the idealism of this great philosopher. Miller himself was the epitome of an active citizen, one of the "thinkers and doers."⁹³ He had a social conscience which emerged in his claim that libraries had a social function in depressed areas. His interests in community causes such as the living conditions of the poor, made him a popular speaker at bodies like the Royal Society, National Council of Women and the Secondary Teachers' Association.⁹⁴

A man of this vision and energy only needed the right milieu for his progressive ideas on mental health to take hold. This milieu was found in Tasmania towards the end of the second decade: firstly in the Premier, Walter Lee, who embraced a number of progressive ideas and reforms. In 1918, his Nationalist Government passed the Children's Charter which addressed the existence and problem of neglected and delinquent children.⁹⁵ The following year, the Lee government turned its attention to mental retardation, encouraged by the director of the insane asylum at New Norfolk, Dr. Emanuel Sydney Morris. Studies overseas showed that governments should be obliged to take action in mental deficiency.⁹⁶

Coincidentally, there were other key figures in the bureaucracy who had progressive ideas and encouraged Premier Lee to undertake reform. They were the Secretary of Police, E.P.Andrewartha; the Chairman of the Prisoners'Aid Society, Henry Reynolds; the Director of Education, G.V. Brooks; the Police Commissioner, J.E.C. Lord, and the two Supreme Court judges, Nicholls and Crisp, who were all forward thinking and willing to be innovative.

With his interest in mental health, Morris Miller was asked to give evidence to the Select Committee reporting on Mental Deficiency in Tasmania in September 1920. This resulted in Miller being asked to draft Tasmania's (indeed Australia's) first Mental Deficiency Act which was largely modelled on

⁹² M. Roe, *Nine Australian Progressives*, (St Lucia, 1984), p.280.

⁹³ *Ibid.* p. 1.

⁹⁴ *Mercury*, 22 October 1964.

⁹⁵ Reynolds, *op.cit.* p.68.

⁹⁶ *Ibid.* p.69.

a similar British Act (1913) with its prime aim "to make provision for the case of feeble-minded and other mentally defective persons."⁹⁷ A Mental Deficiency Board was established to supervise all matters dealing with Mental health and in 1922, Morris Miller was appointed the first director of the State Psychological Clinic, whose chief aims were threefold: to diagnose mental deficiency, classify retarded children (and later adults) and instruct special teachers on their welfare.

Not surprising, the legislation was greeted with suspicion and fear by the community. Some parents believed their children would be hunted down and locked away forever, others, such as L.F.Giblin, believed Premier Lee to be ill-informed in his progressive views.⁹⁸ Miller's views were essentially humanitarian. He believed that once people were classified as being mentally deficient or feeble-minded, some education outside the mainstream education was possible.

Nonetheless, opinions within the community remained divided, with the chief opponents being the medical fraternity who regarded this legislation as an intrusion into their domain. On the other hand, in marked contrast, the Lee Government won the untold admiration of other governments, such as New South Wales: "...Tasmania has shown itself [to be] more advanced than the other states of the Commonwealth."⁹⁹ In June 1924, the Attorney-General, the Hon.A.G.Ogilvie decided to use Miller's skill and expertise and ascertain what proportion of the prisoners in the Campbell Street Gaol were mentally handicapped. The main purpose of this exercise was to certify and register them. All one hundred and nineteen male prisoners were tested in November 1924 with the *Mercury* taking a close interest in proceedings. The following year, Miller's findings were presented to the Tasmanian Parliament in a Parliamentary paper entitled, "Criminality and Levels of Intelligence: a Report of a Mental Survey of the Hobart Gaol."

The mental levels of the prisoners were tested, first using the Stanford-Binet-Simon scale, originally devised in 1903 by the French psychologist, Binet, but later upgraded by American psychologists.¹⁰⁰ The aim of these tests was to establish the prisoner's IQ (intelligence quotient) by a computation of dividing his mental age by his actual age in years and multiplying by 100. As a result of these tests, the prisoners were classified by their psychological profile. Of the one hundred and seventeen prisoners (two had been transferred to New Norfolk because they were psychotic), 9 were imbeciles, 25 feeble

⁹⁷ Mental Deficiency Bill, 1920, p.2.

⁹⁸ Reynolds, *op.cit.* p.71.

⁹⁹ *Ibid.* p.74.

¹⁰⁰ *Ibid.* p.76.

minded; 36 were borderline, 21 were of inferior normal intelligence, 23 were average and 3 were of superior normal intelligence.¹⁰¹

Several important conclusions were drawn from these findings: firstly, that in the future, all prisoners would be classified according to their psychological profile rather than their criminal record which took into account first, second, third and higher numbers of offences. The Superintendent of the Gaol, Captain H.Davies, who had only been in office a short time, was convinced that many of the prisoners were "children" in mind and reorganized the gaol into five divisions of eight classes of prisoner.¹⁰² Significantly, adolescent criminals and remand prisoners were separated from the habitual and psychopathic criminals. The former had always caused anxiety with the gaol Superintendents as they realised that by association, the young prisoner learnt more from the hardened criminal than what he knew before he came into prison.

In order to effect the separation of prisoners, a new gaol needed to be built "on modern lines with ample grounds and buildings so that the superintendent may make more effective use of his improved methods of care and treatment."¹⁰³ To add credence to this request, the 1925 Report cited evidence of two prisons in America where discipline was more lenient and prisoners had more freedom to be responsible for themselves.¹⁰⁴ In addition,

enlightened constructive discipline administered with firm restraint and sympathetic understanding [were] absolutely essential and, at the present time, pre-emptory.¹⁰⁵

A second result of the testing was to confirm, according to current theory at the time, that there was a link with brain size and intelligence. Craniometry had credibility in these early days of applied psychology. Miller claimed that the average individual in the community had a brain size of 1481cc compared to the average of the prisoners tested, 1456cc. Miller found up to 83% of the prisoners in the Campbell Street Gaol were on the small-headed side of brain measurements.¹⁰⁶ Further, he found that brain size was proportional to the "mental grade" of the crime.¹⁰⁷ Sex and violent crimes,

101 Criminology and Levels of Intelligence...Survey, p.3.

102 See Appendix D.

103 See Appendix E.

104 i.e. Sing Sing Prison, New York and Illinois Penitentiary.

105 Criminology and Levels of Intelligence...Survey, p.5.

106 *Ibid.*

107 *Ibid.*

together with petty thieving, were related to below average brain size.¹⁰⁸ A third conclusion that could have been drawn from the tests was that all the mental defectives and subnormal people of the community were in gaol because of the high percentage of inmates being classed as "defectives or delinquents." There were far more of the latter type still at large in the community than in gaol. Miller stressed the importance of education at school age or adolescence to reform "anti-social trends" before they became entrenched in their behaviour. Some defectives were difficult to recognise, even by their relatives or the police authorities and hence may even miss out on their special classes designed to stop them going down a "downward path".¹⁰⁹

What was more important was the environmental factors influencing the potential criminal. The weaker personalities who had not been given the right educational stimuli, were easily twisted and lead astray along a path a crime.

We might well ask ourselves as to whether it is not impossible so to adjust the social, economics and educational order in which these weaker intelligences develop as to enable them to meet more adequately their environmental demands.¹¹⁰

This was Miller the humanitarian, pleading for the understanding of the criminal and pointing out that society was responsible for his care and reform.

Two further requests came from the report that pertained particularly to the adolescent inmate. Firstly, better histories of the prisoner needed to be taken: previous convictions in the children's courts, reform schools (such as the New Town Reformatory and the Deloraine Training School), convictions of drunkenness, sex crimes, bad homelife, poor economic conditions - all were now seen as contributing to the making of a criminal.

The second humanitarian plea was to the educationists of the day. These professionals needed to understand that traditional schooling, both in method and curriculum, was not suitable to 3% of the students and it was this proportion of young children who later made up the 15% of adults with "criminal propensities."¹¹¹ Educationists had to realise,

the serious consequences that arise to the individual and to society from an inadequate adjustment to school curricula and

¹⁰⁸ See Appendix F.

¹⁰⁹ *Criminality...Survey*, p.6.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

character-trends to the mental and physical endowments of the child.¹¹²

The Report into Criminality and Levels of Intelligence of 1925 became important for a number of reasons, not only in raising the public's consciousness of the link between criminality and intelligence, but more importantly, it challenged the traditionalists, particularly the medical profession who hitherto had had the sole care of these people. In 1925, Morris Miller wrote in the *Medical Journal of Australia*:

There is a growing tendency in Australia and New Zealand to confuse mental deficiency with mental disorder...criminals with abnormal mental functioning, usually classed elsewhere as psychopaths, are popularly designated here as mental defectives..."psychopath" and "mental defective" are not synonymous.¹¹³

In 1925, Morris Miller was appointed chairman of the Mental Deficiency Board and he also became a member of the Indeterminate Sentences Board whose chief purpose was to recommend parole. He was fortunate in having progressive men in the judiciary in the persons of C.J.Crisp, A.I. Clark and W. Hutchins. The indeterminate sentence was increasingly being used and in the eyes of the gaol authorities, was very successful in rehabilitating the prison.¹¹⁴

Miller's work continued to have its critics. Dr. William Crowther, now an elderly man, claimed Morris Miller "trod on my toes and interfered in matters not concerning him."¹¹⁵ Another authoritarian figure, a policeman, claimed that the proportion of inmates who had gone through the clinic exceeded those who had not.¹¹⁶ The "professionals" learnt the right answers to give the clinical workers when the former were questioned in order to secure a reprieve or light sentence. Despite these criticisms, Miller continued to try to better the lot of the prison population. He was not silent when he was called upon to give evidence to a later Parliamentary Standing Committee on the Gaol in 1935 but openly criticised the conditions at the Campbell Street Gaol as inhibiting his social reforms. The prisoners needed more space, more exercise,

¹¹² *Ibid.*

¹¹³ Reynolds, *op. cit.*, p. 78.

¹¹⁴ *Ibid.*, p. 79.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

better jobs, more suitable clothes and more enlightened gaolers. This vision would not eventuate for another quarter of a century when the Gaol moved to East Risdon.

II

THE NEED FOR A NEW GAOL

The need for a new gaol for Hobart had been apparent to government officials and to the public since the turn of the century. Exhaustive enquiries and studies had produced excuses of cost, distance, administration difficulties and the close proximity of a growing Hobart.

As long ago as 1915, the Parliamentary Standing Committee on Public Works had considered a proposal to reconstruct the Hobart Gaol. The main thrust of this 1915 Report was:

To acquire the fullest information regarding the condition of the present Gaol, its general defects, and the possibility of carrying out any scheme of a permanent character which would bring the institution up to the proper standard of a modern prison.¹¹⁷

The Report emphasised that unless the above was accomplished, continuing to spend large sums of public money on the dilapidated Campbell Street Gaol would be a waste, and necessary reforms, seen to be urgently needed as far as the prisoners were concerned, could not take place.

Those involved in the Report included a wide cross section of officials the Premier, John Earle; the Sheriff, Hector Ross; the Superintendent of the Gaol, C.S. Simmons; the government architect and health officer, as well as the gaol carpenter, master mechanic and master bootmaker. A consultant from the NSW prison service, Mr. Samuel McCauley, was invited to give advice and comment on the current state of the buildings and the methods used in disciplining the prisoners.

A proposal placed before the Committee involved a scheme of reconstructing many parts of the current gaol and remodelling and repairing other parts at an estimated cost of £20,000 given the unpredictable problems that could be encountered in the demolition of an old building.¹¹⁸ The Gaol covered some 1 1/2 acres, was in close "proximity to populous thoroughfares" and its external appearance was "unsightly" and the prison buildings "antiquated in character". The Report claimed that these buildings were "too

¹¹⁷ Parliamentary Standing Committee on Public Works: Report on the Proposed Remodelling and Reconstruction of the Hobart Gaol, 1915, p.1.

¹¹⁸ *Ibid.* p.2.

old to be effectively repaired."¹¹⁹ This was a contributing factor to the ease with which prisoners could escape. One easy route of escape was through the superintendent's residence which fronted onto, and indeed cut off, Melville Street.¹²⁰ There was no guard placed on the residence and escape was a simple procedure through this way. Apart from being situated within the city, another problem was that the prisoners' movements and activities could be easily seen from the Domain, where it was possible to communicate with inmates, presumably through some form of signalling.¹²¹ This raised questions about the security of the gaol.

Other concerns of this period were sanitation and the old wooden cells.

The sanitary accommodation is very crude and inefficient, and only the exercise of scrupulous and constant care has kept the health of the inmates up to the fairly high standard that has been in the Gaol and immediate neighbourhood.¹²²

In reality the gaol was still not connected to the sewer until 1917 ¹²³and a large open drain ran down the centre of the gaol, making living conditions unpleasant and difficult.

The demolition of some old wooden cells was required immediately for they housed "a most objectionable class of vermin"¹²⁴ which no amount of cleaning would eliminate. Mr. McCauley, the Controller-General of Prisons in NSW, the consultant for this report, recommended "the place be razed to the ground as soon as possible and no attempt made to effect any permanent improvement on the present site."¹²⁵ With such expert and considered advice, the Committee recommended that no large expenditure be spent on capital works, only necessary repairs and sewerage upgrading. Accordingly, the government turned its attention to building a new prison on a more appropriate site.

The criteria for such a new prison were clearly stated: it should be outside the city boundaries but not too far from the centre of population; the buildings should be of "modern design" and there should be "ample

¹¹⁹ *Ibid.*

¹²⁰ *Infra* p.46.

¹²¹ See Plate 2.

¹²² Parliamentary Standing Committee Report, 1915, *op.cit.*

¹²³ Report for Gaols, Hobart and Launceston for 1916-1917, p.2.

¹²⁴ Parliamentary Report, 1915, *op.cit.*

¹²⁵ *Ibid.* pp.2-3.

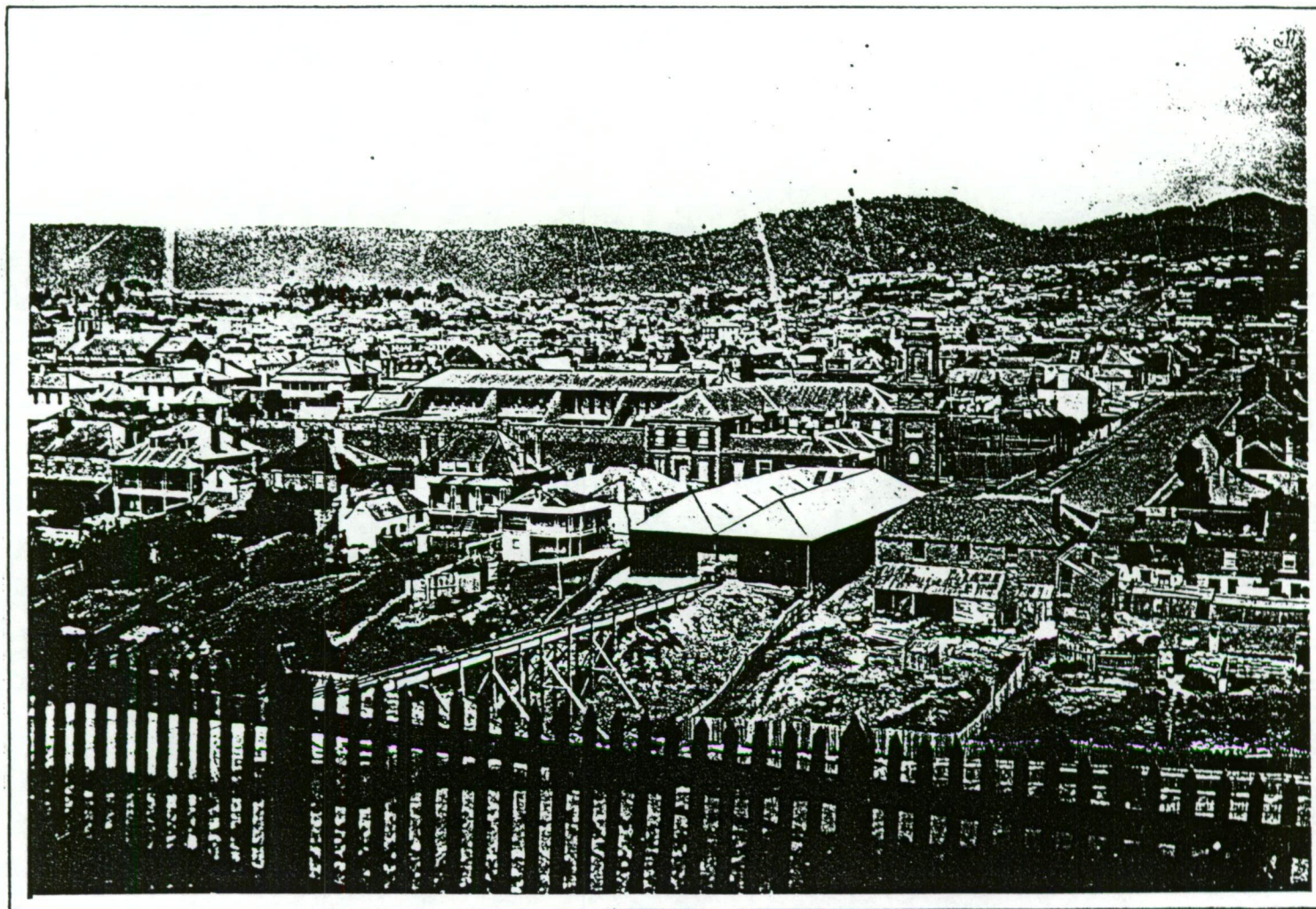


Plate 2: The Campbell Street Gaol and Environs (AOT)

space.¹²⁶"The participants who gave evidence here stressed two things: the execution of meaningful gaol discipline and economy. With the former, the gaol officers could see the need to classify and separate prisoners.¹²⁷ The current arrangements had mental defectives sharing yards with remand prisoners as well as adolescent offenders. In addition the gaol officials had embraced a more humane philosophy of gaol discipline:¹²⁸ no longer was it purely punitive, but it had to be reformatory as well.

A more concrete piece of evidence which swayed government officials' thinking was the question of economy. A modern prison would reduce the need for so many prison staff. In 1915, the ratio was 1 prisoner for every 2 officers, whereas in NSW, the ratio was more like 4 or 5 prisoners per 1 staff member. It was estimated that a saving of £2,000 per annum could be made, which, if invested, would cover the interest on a loan of £40,000 at 5% per annum needed to build a new gaol.¹²⁹ More specifically, it was suggested that ideally a new gaol be built on 20 acres of land, the gaol proper taking up 2 to 3 acres, and agriculture and horticulture taking up 8 to 10 acres outside this. Beyond this, a bank of trees should be planted. The gaol should be able to accommodate 100 prisoners, based on figures for the last 25 years. Possible cost should be between £30,000 and £35,000, although Mr. McCauley pointed out that prison labour, properly supervised could reduce this figure to 20,000 (pounds).The Government architect should visit modern prisons in NSW so that a Tasmanian version might be copied or modified.¹³⁰

The idea of a gaol built in a rural setting, but not far from Hobart, set in train a number of possible sites to be investigated, including Derwent Park, New Town, New Norfolk ("Milbrook Farm" and "Mayfair") Margate, Maria Island, Berriedale and finally the "Kilderry Estate" beyond New Norfolk. The driving notion behind the thinking of gaol and government officials was the security of the population at large and the benefits for the prisoner.

The evidence shows that work in the open fields, but withdrawn from public oversight, is highly beneficial from the reformatory and educational standpoint, as well as conducing to the better health of the individual.¹³¹

¹²⁶ *Ibid.* p.3.

¹²⁷ *Supra* p.19.

¹²⁸ Parliamentary Report, 1915, *op. cit.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

The first of the rural sites was some land owned by the state at Derwent Park. The advantages of such a site was that it was only 5 miles from Hobart,; it was adjacent to a railway line and mostly obscured from public view.¹³² Despite these advantages, the move was not proceeded with by the government mainly because the area was seen to be a prime site for the development of housing.¹³³ Obviously there was no urgency about the proposed removal as no action was taken by the government after this 1915 Report nor Stafford Bird's Report of 1908.

However, the need for a new gaol did not leave the interest of the local press.¹³⁴ In 1924, the Premier, J.A.Lyons, received a plan from Mr. W.Baillie of New Town, setting out the details of removing the Campbell Street gaol to New Town. It would appear that Mr. Baillie was some way connected to the building industry as his plan was able to detail costs, design and building materials, the latter being preferably reinforced concrete.

He suggested that the current Gaol ought to be sold, and the money accrued be used to pay for a new one, built out of concrete and built by prison labour. The Governor of the Gaol, Captain Davies, had allowed him into the Gaol to undertake a full inspection of the complex. Again, as with the 1915 Parliamentary Report, Baillie itemised the antiquated sanitation and the old dilapidated buildings as being inadequate for a modern gaol. Further, the city site was preventing business expansion, and by cutting across Melville Street, took up valuable land that had the potential for further development. The sale of these blocks would contribute to the payment of the new gaol. In addition, the sale of the stone in the current gaol buildings would reduce expenditure on the new gaol.¹³⁵

The site chosen at New Town was about 70 acres behind the Invalid Home. The advantages were that it was government land; it was a reasonable distance from the city; the site would not encroach on further residential expansion and the area was large enough for industrial and agricultural work, so necessary for the reform and rehabilitation of the criminal types. A hint of racism unfortunately crept into his reasons for the prisoners to establish a market garden there.

At present time, market gardening is run principally by Chinese who although in a general sense are well behaved citizens, are

132 *Ibid.*

133 *Mercury* 21 June 1924

134 *Ibid.*

135 *Ibid.*

undesirable from their mode of living. Further, their main object is to save money to take away to their own country.¹⁴⁰

For these reasons, Mr. Baillie felt that the trade unions would not object to some healthy competition. He further put forward the suggestion that the current Governor of the Gaol, Captain Davies, whom he described admiringly as "an officer who has not only got the right enthusiasm, but also the practical knowledge gained through world-wide experience...of all up-to-date, modern forms of administration",¹³⁶ should assume the control of not only the new gaol, but the invalid institution and the Boy's Reformatory School, and in doing so, would save a considerable amount in wages.

Additional savings could be made by concentrating on the gaol industries of baking, cooking, washing and firewood collection, as well as the sale of the vegetables grown on the prison land. In 1924, the Gaol secured most of its firewood from the Domain. Mr. Baillie pointed out that there was an abundance to be had from the foothills of Mt. Wellington. The humanitarian spirit, so pronounced a decade later, came to the fore in his fervent wish that reformation of the criminal types could occur if they were given meaningful remunerative work, and on release, the people of Tasmania should:

...take up their share of the burden by being prepared to give the men...every facility to make good, especially guarding them at the most critical time when they may be influenced by stronger minds either for good or evil.¹³⁷

If Premier Lyons adopted his scheme, then this land would be "worth living in."

This scheme was not adopted, but in 1926, a Parliamentary Standing Committee on Public Works considered a different proposal to remove the Gaol to a site near New Norfolk. The site was the property of "Mayfair", some 360 acres owned by Major Cotterell-Dormer, one time aide-de-camp to the Governor of Tasmania.¹³⁸ It was 3 miles beyond New Norfolk and fronted onto the main road and the Derwent River.¹³⁹ The railway passed through the property and it had its own siding. Some 25 acres were good quality, alluvial land, the rest needed clearing and building up. The foothills at

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ J. Cowburn and R. Cox, *New Norfolk Pioneers and Homes*, New Norfolk, Date not specified, p.110.

¹³⁹ See Fig. 2.1.

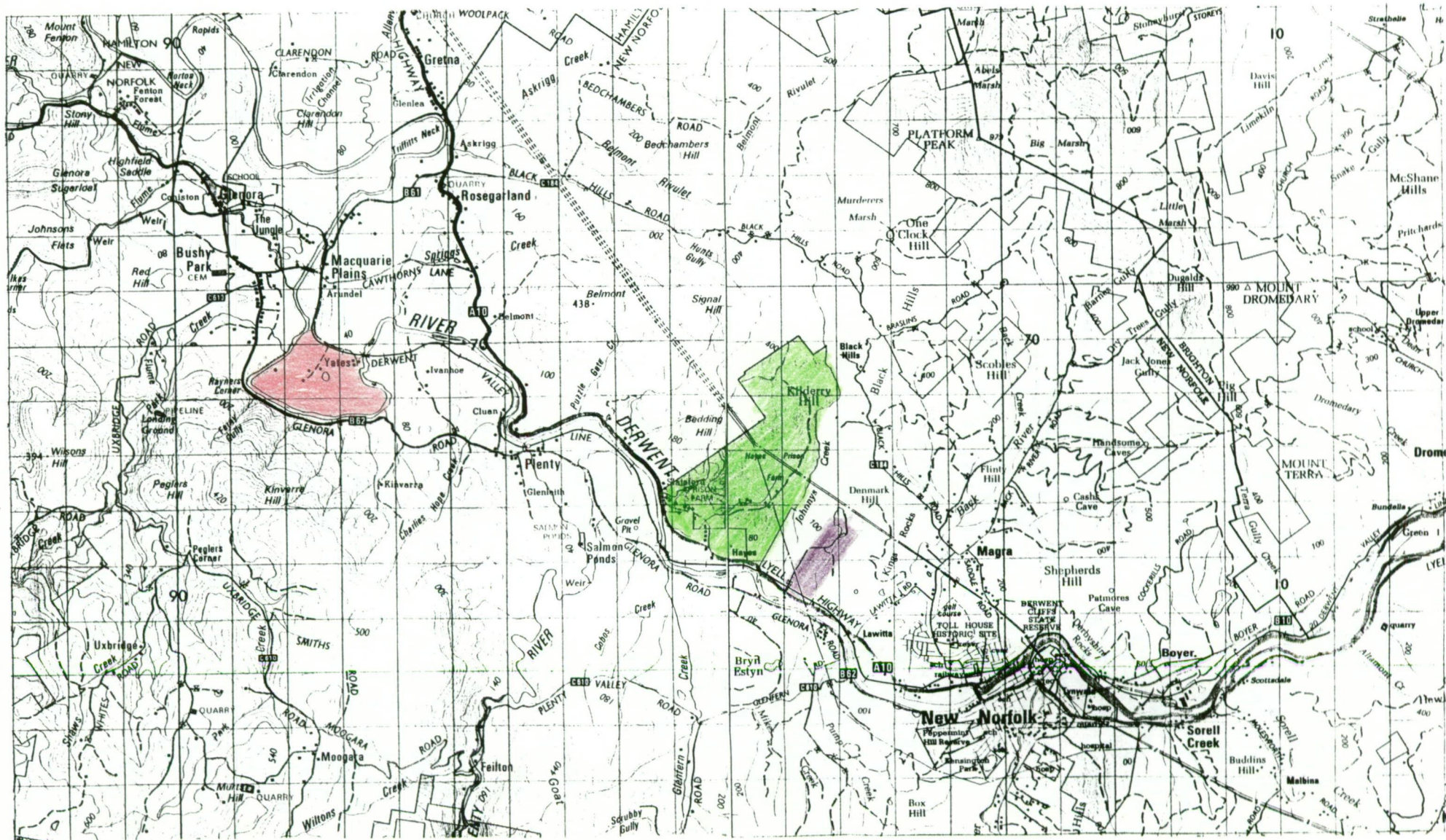


Fig. 2.1

Location of Kilderry Estate, "Mayfair"
and Yates Seed Farm.

the back of the property had adequate supplies of firewood on the neighbouring private properties had plenty which could be sold to the Government on a royalty basis.¹⁴⁰ In addition, it had an adequate water supply, although the existing reservoir would have to be upgraded and a septic tank and sewerage system installed.

Further support for the "Mayfair" proposal came from the Superintendent and Deputy Superintendent of the Gaol who stated that it was becoming increasingly difficult to find work for prisoners, particularly those serving short term sentences. In evidence Captain Davies contended:

....a rural situation...would give opportunity for the introduction of more suitable outdoor employment of a productive and remunerative character for prisoners, especially the manually minded, who constitute the greater percentage of our gaol population, and many of whom are indulging in enforced idleness owing to lack of outdoor occupations, which means a serious economic loss to the state.¹⁴¹

Other variables which favoured the removal to "Mayfair" was the current price of vegetables at 2 pence per pound all during the year and the high cost of firewood for the gaol at £300-£400 per annum.¹⁴²

Additional capital could be gained from the Campbell Street site, valued at £15,000, based on a "subdivision basis". It was felt that the old gaol buildings had little value in themselves. At best, "a speculator...might be able to use some of the stone for foundations."¹⁴³ Others disagreed saying that the old gaol site should not be sold but kept for future public purposes. This was indeed what happened, given the lack of Crown land in the vicinity and the recent payout in compensation by the government for the purchase of land for a State School.¹⁴⁴ The Committee weighed up the costs of a new gaol. Labour could be supplied by the prisoners. This might cost some £3,000. In addition, another £7,000 might be saved in the supply of firewood, bread and other services to other institutions in the area.¹⁴⁵

Despite these arguments, the "Mayfair" proposal was rejected, with the claim that the proposed savings in supplies were unrealistic and the cost of

¹⁴⁰ Parliamentary Standing Committee on Public Works on Removal of Hobart Gaol to "Mayfair" New Norfolk, 1926, p.3.

¹⁴¹ *Ibid.* p.2.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ The former cemetery of old Trinity Church was purchased for a state primary school.

¹⁴⁵ Parliamentary Committee...on the removal of gaol to "Mayfair", 1926, p.4.

building a suitable prison and accommodation for the prison officers would exceed the estimated savings. The Committee opted to defer the removal of the gaol "until the time arrives for centralisation of this and other institutions in some suitable locality."¹⁴⁶ The response of the Government was hostile. The Attorney General, A.G.Ogilvie, deeply regretted the Committee's decision, pointing out:

There are Acts on the Statute book which cannot function without adequate buildings...we have adopted, as far as possible, the policy of segregation in regard to inmates...with the result that gaol offences have been reduced by 60%.¹⁴⁷

As a result of this decision, the Government would have to spend immediately between £2,000 and £3,000 on upgrading Campbell Street Gaol.

The inmates have certain legal rights under existing legislation and we must administer the Mental Deficiency Act in accordance with the law. In the existing buildings we have little hope of doing anything material to help men regain their self respect.¹⁴⁸

In Parliament, Ogilvie's humanitarian sentiment was taken up by Mr.J.Soundy who felt the the Report left "not a ray of hope for the future." He believed that, although the question of costs was serious, the humanitarian aspect was equally as serious. He believed that "the work of the Gaol was not merely to punish men for crime and act as a deterrent, but also to do reformatory work."¹⁴⁹ Another parliamentary colleague, Mr. Cosgrove added his protest against the decision, claiming "the old building did not provide sufficient sunshine for the men" and that the gaol was a fire trap.¹⁵⁰

In the Committee's defence of its findings, its chairman, Mr.W.Sheridan, simply stated that the parameters for his enquiry into the gaol had been to investigate the costs of removing it and the savings effected by such a move, not the virtues of a rural gaol.¹⁵¹

The close proximity of other public services was seen to be partially fulfilled by the next proposal, the move to Milbrook Farm Estate next to the Mental Diseases Hospital at New Norfolk in 1935. The government had

¹⁴⁶ *Ibid.* p.5.

¹⁴⁷ *Mercury* 30 July 1926

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

purchased part of Milbrook Farm estate, about 15 acres, from Mr. R.Dixon some three years earlier.¹⁵² Again in 1935, the question of economy was used in grouping under one administration, such institutions as the Gaol, the Mental Diseases Hospital, the Infirmary and the State Reformatory Homes, which would bring "substantial savings in the cost of upkeep and management" as well as securing "a more efficient service."¹⁵³ The local New Norfolk councillors formed a deputation to the Attorney-General to press the advantages of the New Norfolk site. For a gaol, it had "an excellent water supply, hydro-electric power, and rail, road and water communication with the city."¹⁵⁴ On further investigation by the Attorney General, however, it was found that the water supply from the Lachlan Rivulet was not sufficient. It was so low in pressure that it would not have put out a fire at the Mental Hospital. In addition, some of the Councillors, such as P.J.Graham, were reluctant anyway to divert any water away from the Lachlan hopgrowers and they feared the Lachlan Valley would be "wiped out as a hop growing centre."¹⁵⁵ Other councillors quibbled about the costs of upgrading the existing water pipes, but others felt the advantages for the township of New Norfolk far outweighed these problems.

The establishment of the Gaol at New Norfolk would largely increase the population of the town, and would be of great advantage to the district.¹⁵⁶

The Governor of the Hobart Gaol made an inspection of Milbrook Farm and issued his report in January 1936. He found several factors wanting, including the close proximity of the New Norfolk public golf course; the public had access through the Milbrook Farm itself; the water supply was inadequate for both gaol and irrigation use and the timber supply was not sufficient to sustain the gaol's needs.¹⁵⁷ The offer of Milbrook Farm was therefore abandoned.

In 1935, the Lieutenant-Governor of Tasmania, Sir Herbert Nicholls, ordered a careful and exhaustive study of the existing gaol buildings and required guidelines for a new reformatory gaol. It was now plain that such a prison should be a gaol farm and have the following essential features: firstly,

¹⁵² Press Cuttings from R. Cox (New Norfolk Historical Society), source unstated, 30 October 1935.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*, 9 July 1935.

¹⁵⁵ *Ibid.*, ? July 1935.

¹⁵⁶ *Ibid.*

¹⁵⁷ Letter of Col. Mullen, 9 January 1936, AGD 1/132/19 (vol.2)

an ample water supply for domestic use, sewerage, irrigation, firefighting etc. secondly ample supplies of firewood, preferably on the property, or if not, easily available within reasonable distance; thirdly, direct service by the State rail system; fourthly, it must be within thirty miles of Hobart; and fifthly, it must have a sufficient area of good land to give those charged with the management of the farm, a reasonable chance of carrying out successful farming.¹⁵⁸

To find a farm property with all these features was difficult and remote. However, with the press giving such a wide coverage for a proposed new gaol, in 1936 there were three proposals put before the Government as alternative rural sites for the gaol. One was at Margate, comprising of about 1000 acres at a cost of £5,000.¹⁵⁹ It had certain features considered to be desirable for a rural gaol including a good water and wood supply. Unfortunately, the quality of the soil, with the exception of a small area of river flats on the North West Bay Rivulet, was unsuitable for farming.

In July 1936, Mr. Norman R. Pierce, a fruit broker and exporter, offered his father's property at Berriedale for a reformatory prison,¹⁶⁰ but his offer was not taken up by the government. In the same year, consideration was given to Maria Island being resumed again as a prison colony, concentrating on forestry, but distance cancelled this out.¹⁶¹ In September 1936, the Yates Seed Farm, "Derwentside" at Macquarie Plains was purchased.¹⁶² It had several habitable buildings as well as a barn, stable and out buildings. It consisted of 100 acres, had a railway siding and was bounded on three sides by the River Derwent, an advantage as far as security was concerned.¹⁶³

Towards the end of 1936, the farm plot at Government House was given up and a farm acquired at New Norfolk called the Kilderry Estate, the property of the Agricultural Bank. It comprised of 1400 acres and was not far from the Cotterell-Dormer property of "Mayfair".¹⁶⁴ Twenty carefully selected prisoners were initially sent there under the care of a staff of a farm overseer and three warders. The farm was mixed: an orchard of 12 acres, sheep, dairying and vegetable garden. It was expected that within two years, the farm would be able to produce meat and vegetables for both the Gaol and Lachlan Park Hospital (the Mental Diseases Hospital). A great deal of work had to be

158 Parliamentary Standing Committee on Public Works: New Gaol proposal, 1935, p.3.

159 *Ibid.*

160 Letter of Norman R. Pierce to Attorney-General, 7 July 1936, AGD 1/132/19 (vol.2)

161 *Advocate*, 23 July 1936.

162 Purchase of Yates Seed Farm, 25 September 1936, AGD 1/132/19 (vol.2).

163 *Ibid.*

164 Annual Report of the Controller of Prisons for Year ended 30 June 1937, p.2.

done to clear the land for more pasture, erect accommodation for 30 men, build a mess, and restore the cottages for habitation for the warders. Within a year, the Governor of the Gaol, Col.L.M.Mullen, wrote of the success of the farm:

The value of the honour system cannot be too highly estimated. The outlook of the men who have been there is broadened and when they leave, they do so with the knowledge they they can be trusted and are able to make a fresh start in life.¹⁶⁵

A year later Mullen noted that the men at the gaol farm "have a different outlook from those in the Gaol and the fact that only two men have run away in two years is evidence that, when they are put on their honour, they rarely abuse it."¹⁶⁶ Even some of the recidivists had responded to the conditions on the farm.¹⁶⁷ Of the 104 men who passed through the farm in 1949, only five returned to Gaol on reconviction.¹⁶⁸ During World War II, Kilderry switched to war time production, co-ordinated by the Department of Agriculture.¹⁶⁹ The production of vegetable seed, which had been undergoing tests in previous years, now was a matter of national importance and a number of contracts had been arranged for the immediate future.¹⁷⁰

Further reformatory and rehabilitative work was undertaken in 1955 when a new 29 room block was opened, especially for vagrants, beggars, alcoholics and other petty offenders.¹⁷¹ Previously, such offenders had been committed to St.John's Park or the Campbell Street Gaol, now they were set to work in the open air on the Farm, "so that their minds and bodies [could] be restored to the standard demanded by society."¹⁷²

The *Mercury* described the Kilderry or Hayes Prison Farm as it was to become known as "more like a holiday resort...than a prison department."¹⁷³ Each inmate had his own room, complete with wardrobe and dressing table, a chair and a hospital-type bed." The men had a dining room, kitchen, laundry, a spacious recreation room for table tennis, cards, reading, concerts and other pastimes. The buildings were centrally heated.¹⁷⁴

¹⁶⁵ *Ibid.*, 1938, p.2.

¹⁶⁶ *Ibid.*, 1939, p.2.

¹⁶⁷ *Ibid.*, 1950, p.1.

¹⁶⁸ *Ibid.*, 1942., p.2.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ *Mercury*, 22 July 1955.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

The jibes of the press aside, the annual reports of the Hayes Prison Farm showed steady progress. From an economic point of view, the Gaol Farm justified its establishment: it had a surplus of vegetables and stock, ran at a profit, had become one of the centres for agricultural experimentation in Tasmania and the focus of interest for other agricultural workers to see new methods of breeding and breeding lines.¹⁷⁵

However, its real justification went beyond financial success. It provided a cheaper method of penal administration than the old system,¹⁷⁶ and its ramifications even went deeper. There at the farm,

The waste materials of an imperfect social system [were] salvaged and made into useful assets. Men who, in the past, were regarded as dangerous criminals, who [had to] be confined by prison bars and walls,[were] now submitting to the restraint, imposed by their sense of honour and [were] being given a chance to rebuild their lives in comparative freedom.¹⁷⁷

With the success of Hayes, there had been definite plans to move the entire gaol out to Kilderry, but the advent of World War II and its attendant priorities for the government, laid that removal aside. In the meantime, a Gaol riot in 1939 and another Royal Commission in 1943 set up to investigate the alarming number of escapes from Campbell Street, drew the inadequate security of the Gaol to the public's attention.¹⁷⁸

In the Annual Report of the Gaols Department for 1945 (unpublished as a parliamentary paper), the Acting Controller of Prisons gave additional reasons for the unsuitability of removing the entire Gaol to Hayes, some twenty six miles from Hobart. Because of this distance, a metropolitan gaol would still need to be built for remand and short-sentence prisoners, as well as a separate building and area for a female reformatory. This would all mean a duplication of cost and subsequent maintenance.¹⁷⁹ It was therefore, more expedient to erect the main gaol closer to Hobart. The suitability of sites took over a year to decide. In the 1946 Gaol Report, the selection of Claremont had been rejected, and two further sites were being considered, one of them at East Risdon. Whatever the site chosen, it must be:

¹⁷⁵ Annual Report of Gaols Department for Year ended 30th June 1945 (unpublished), p.4.

¹⁷⁶ Unsigned letter to Attorney-General 20 September 1942, AGD 1/211/19.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Infra* p.37.

¹⁷⁹ Annual Report of Gaol, 1945, *op.cit.* pp.6-7.

an area of ground sufficient to provide a Gaol and Reformatory both for male and female adults and a place of detention for youthful delinquents and for delinquent mental defectives, together with an area of arable ground to provide suitable employment or occupational therapy.¹⁸⁰

By 1956, the need for a new gaol became urgent. The Attorney-General claimed that "the existing buildings were so bad in many respects that there was a danger that they would promote the ills that the authorities sought to cure."¹⁸¹ The Campbell Street Gaol really only accommodated 100 male prisoners. Figures from 1945-1946 should the daily number in the gaol at 70, whereas in 1954-1955, that number had risen to 116.¹⁸² To accommodate the extra numbers, the authorities had used the old House of Correction, built in 1813, and unsuitable for use because of its "deplorable condition and grave danger of fire."¹⁸³

A new Gaol was planned to accommodate 252 male prisoners. This figure was based on the rate of increase in the last twenty five years., It was deemed unsuitable and ineffective to have a gaol population greater than 250 as individual attention and reformative treatment could not be given. "After that (number) they became a mob."¹⁸⁴ The cells in the new gaol would be larger, (10ft by 8ft) against the cells in the Campbell Street Gaol (7ft by 4ft 9 in). Each cell would have a water closet, hand basin, electric light and the whole building would be centrally heated. These plans satisfied the demands of the authorities, that the prisoners be segregated, even in the dining areas.¹⁸⁵ There was to be ample provision for recreational activities, including a gymnasium for sport, debating, concerts, reading and studying - all part of the reformative treatment of the prisoners. As the number of juvenile offenders had increased,¹⁸⁶ separate recreation and class rooms had been set aside for them.¹⁸⁷ In January, 1955, 56 or one third of the men gaoled at Hobart and Hayes were under 25 years of age.¹⁸⁸

The site of this new gaol was a farm property at East Risdon of about 150 acres. Part of this area would be put under cultivation and operated with

180 Ibid. 1946,(unpublished),p.5.

181 Parliamentary Standing Committee on Public Works: Proposed New Gaol at Risdon, 1956, p.3.

182 Ibid.

183 Ibid.

184 Mercury 1 March 1956.

185 Parliamentary Standing Committee, 1956, *op.cit.*,p.4.

186 Ibid., p.3.

187 Mercury 1 March 1956.

188 Ibid.

the advice of the Department of Agriculture. Only selected prisoners would work in the vegetable gardens. The area would probably be able to be irrigated as the Southern Regional Water Scheme had a reservoir nearby.

The Attorney General again stressed the benefit for the prisoner in such a gaol:

...nearly all modern thought on the question of penology was along the lines that prisoners must be encouraged to get rid of their revengeful attitude, and as far as possible, they should be provided with an atmosphere that was not one of despair and depression but an atmosphere of hope. This could only be done in circumstances under which a prisoner could respond. At the present Gaol [Campbell Street] any measure of reform was quite hopeless.¹⁸⁹

It had taken almost fifty year to finally achieve a new Gaol for Hobart, indeed for Tasmania. The old Campbell Street Gaol had changed very little over the previous one hundred years and any attempt to adopt modern reformatory treatment for the prisoners was doomed at its inception. The community of the 1950s, generally accepted the principle that a penal system must provide for the best reformatory and rehabilitative methods. Moreover, the criminals of society were society's responsibility, no longer to be locked away out of sight. The Campbell Street Gaol's passing would be missed by few for it was little better than a "weird collection of unsanitary, unhealthy, and unpleasant shanties that [made] such an eye-sore of Campbell Street."¹⁹⁰

¹⁸⁹ Parliamentary Standing Committee, 1956, *op.cit.*, pp.3-4.

¹⁹⁰ *Mercury* 2 March 1956.

III

PUBLIC INQUIRIES INTO THE HOBART GAOL

The Campbell Street Gaol became the subject of a number of public enquiries-Royal Commissions, Boards of Inquiry as well as Parliamentary Standing Committees on Public Works. The latter has already been dealt with at some length, ¹⁹¹as they addressed the need for a new gaol to put into practice the reforms of the criminal and a number of the statutes passed in Tasmania, such as the Mental Deficiency Act of 1920. The Royal Commissions and Boards of Inquiry were held usually after a number of escapes from the gaol. Some findings were published (1943), others were not (1926), while others were held "in camera" (1934). Inevitably, their findings amounted to three basic issues: the dilapidated condition of the Campbell Street Gaol being conducive to easy escape; the question of discipline among gaol officials and the organization of the internal workings of the prison itself.

The Royal Commission of 1926 was set up to ascertain whether the escape of four prisoners on 21 November 1926 was due to inefficient security methods at the gaol. The report of the Commissioners, E.W.Turner, R.Cosgrove and J.C.McPhee, was a relatively short one and was never published because it was critical of prison administration.

The escapes took place on a Sunday, a day significant in a number of subsequent escapes. The prisoners were being mustered to attend a service in the Penitentiary Chapel at 2.00 pm for the Salvation Army Service. The different denominations took it in turns to have morning and afternoon services in the chapel. It appeared that the would-be escapees knew the movements of the prison wardens for this weekly routine, and while the prisoners were being moved into Church, and another sick prisoner by the name of Knight was being attended to by another warder, the four prisoners, Dobson, Downs, Bryan and Price managed to escape through the back of the prison, over the workshop roof, using a key to open doors and a pickhead to break padlocks.

The Report is critical of the warders for failing to find an implement as large as a pickhead, secreted in the men's cells.¹⁹² In fact, it is obvious from the report that most of the findings of the Commissioners have been censored

¹⁹¹ *Supra.* Chap.II.

¹⁹² Royal Commission ...into the Escape of prisoners from the Hobart Gaol (unpublished), 1926. p.3.

with a slash through most of the report. It is for the following findings that the report was not published.

Firstly, the methods used by warders to search both the person of the prisoners and their cells were plainly inadequate.

That so large an implement as the pickhead could be available to the prisoners and not discovered by the attendants, would have appeared incredible if it had not happened and although we cannot allot the blame to any individuals, we consider that neither of the implements should have escaped notice if meticulous care were taken in searching both persons and places.¹⁹³

The gaol authorities allocated this job to a single junior warder, insufficient for a proper search. As to the safety and security of the gaol generally, the Report itemised several disturbing factors. The key used by the escapees was a common one, opening over one hundred cell doors and gates in the gaol. A statement in the report forboded a similar escape in 1934 - same prisoner, Price; same route of escape; and probably even the same key.

Some accident...might at any time, place such a key or its imprint within reach...of the criminal classes and render a similar attempt at escape quite possible.¹⁹⁴

A second security risk was the brass padlocks which were too easily broken and were inappropriate for the gaol.¹⁹⁵ The stronger, malleable steel type were "being adopted elsewhere" and should be used at Campbell Street. Thirdly, the exterior fence near the bakehouse was falling down and the exterior wall was weathering away.¹⁹⁶ This should be repaired as soon as possible. A fourth area of weakness was the solitary cells from the main gaol. As escapes had occurred from here in the past, these cells should be brought closer, to be under constant surveillance.¹⁹⁷ There was also a real risk of fire with the accumulation of wooden furniture from schools waiting to be repaired, and the wooden partitioning in the reformatory section was a risk. The prisoners should not be housed in the same building as this potential fire hazard.¹⁹⁸

¹⁹³ *Ibid.*

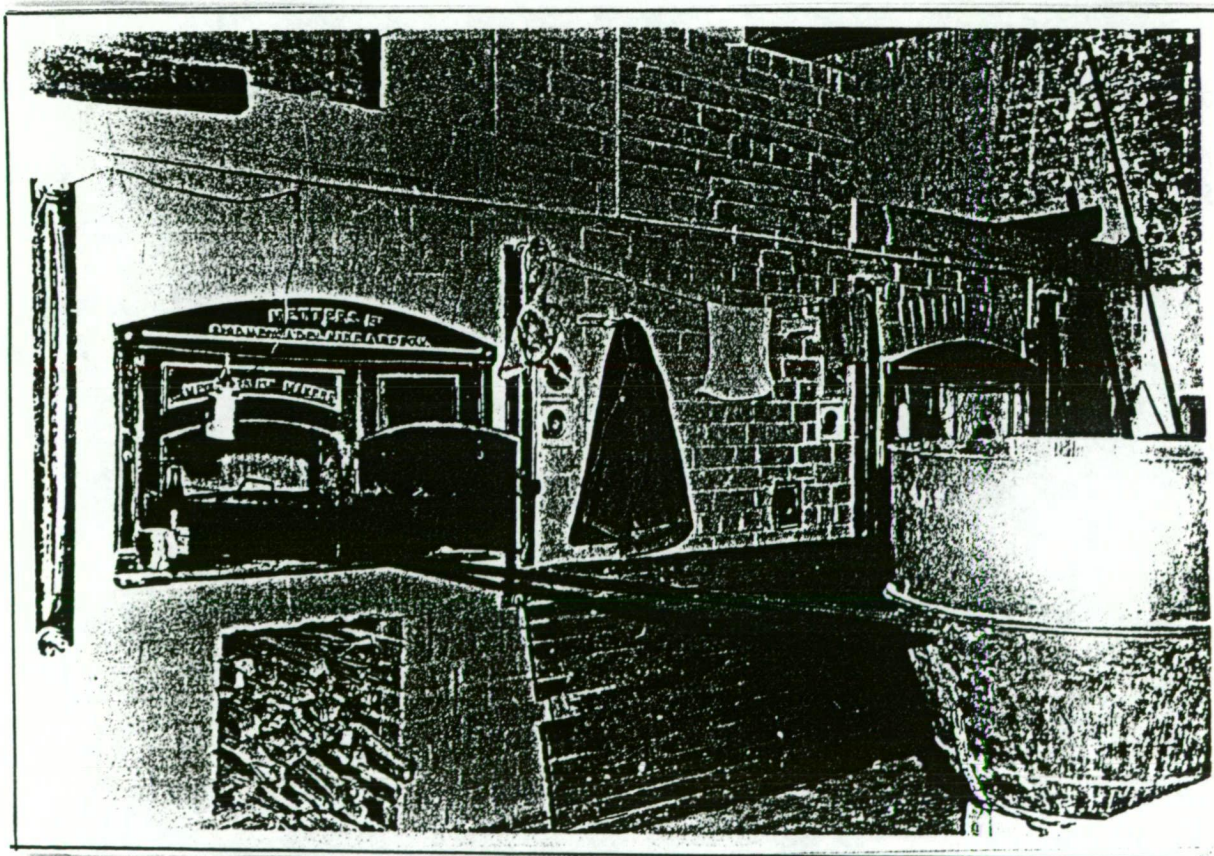
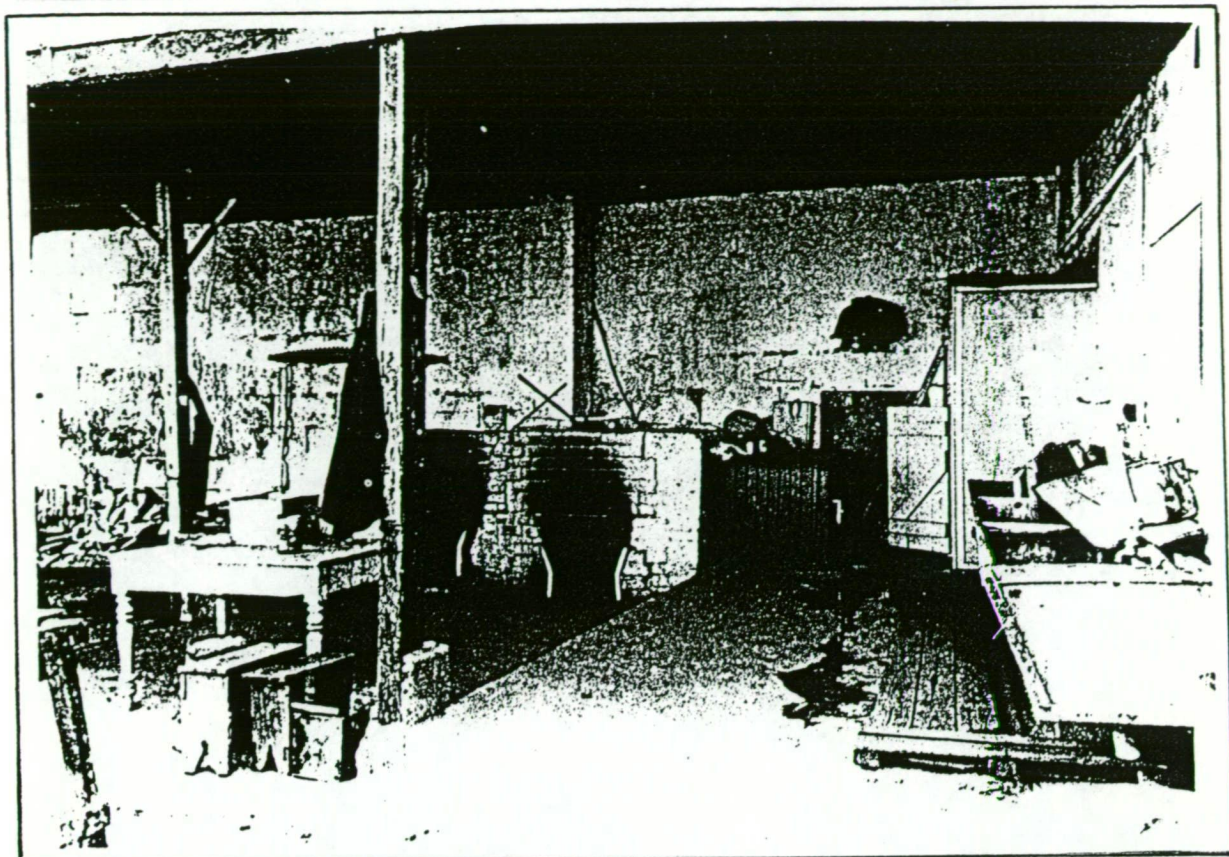
¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ See Plates 3 and 4.

¹⁹⁷ See Plates 5 and 6.

¹⁹⁸ *Ibid.*, p.4.



Plates 3 and 4: The gaol bakehouse (AOT)

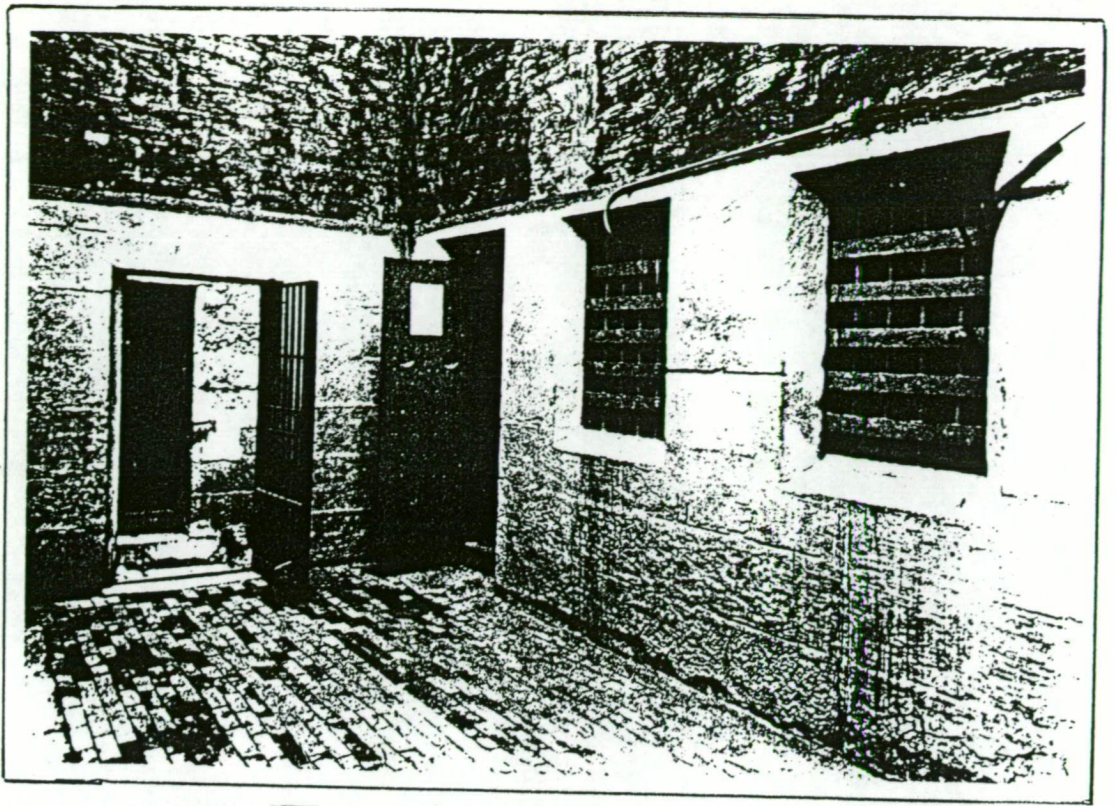


Plate 5: Solitary Cells (AOT)



Plate 6: Security Cells (AOT)

Finally, there was some risk that a warder could be assaulted at the "gaol front" when the prisoners were being marshalled for church.¹⁹⁹ A change in routine would overcome this risk. The mental defectives should be ushered in first, followed by the rest of the prisoners, thus never allowing those prisoners not attending church, to be unsupervised.

This Royal Commission of 1926 was significant for two other reasons, other than it anticipated the 1934 Royal Commission in a similar mass escape. Firstly it pointed up the laxity of the prison authorities in not carrying out recommendations made by the Public Works Committee in 1925 headed by Mr. Cosgrove to remove the fire hazards in the gaol. Secondly, because the findings of this Report were suppressed, the gaol authorities in 1934 were never told that the same methods of escape were probably used by Price et alia, to escape in that year.

There are a number of similarities between the 1926 and the 1934 Royal Commissions: both were called after a number of escapes; both involved a common prisoner, Price; both occurred on a Sunday at church muster and both, although more so the latter, questioned the security of the Campbell Street Gaol. Both were not made available to the public, the first one because of the condemnation of lax prison routine and methods, the second one because it "was never printed and appears now to have been lost."²⁰⁰ Quite the contrary. A typed copy exists, unsigned, of some ninety six pages of evidence and recommendations.²⁰¹

The Royal Commission was set up in January 1935, to enquire into the seemingly easy escape of three prisoners, Keith Wrathall, James Hogan and the notorious, Henry Price on 11 November 1934. There were four separate components to the inquiry: to enquire into the escape, its manner, means and causes; to ascertain if the escape was due to the mismanagement, misconduct or negligence on the part of the gaol staff or to a deficiency in the gaol building; to examine the working of the gaol in terms of staff, building, methods of penology; and to suggest any remedies should any faults in the aforesaid be found.²⁰²

This Report was far more thorough and exhaustive than its predecessor. The Commissioner detailed the staff's responsibilities, hours worked, movements within the gaol, and referred frequently to the 1868 Gaol Regulations²⁰³ still in force some sixty six years later. The Report contained a

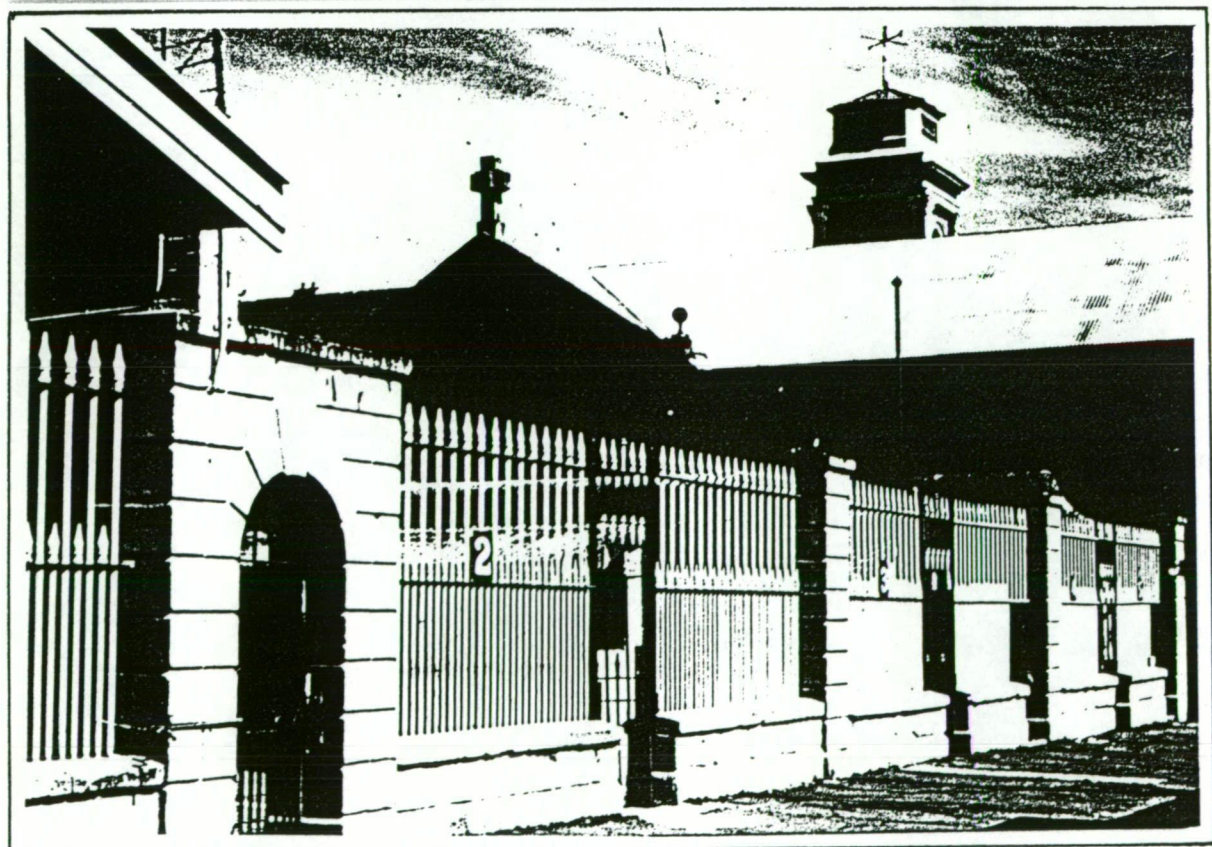
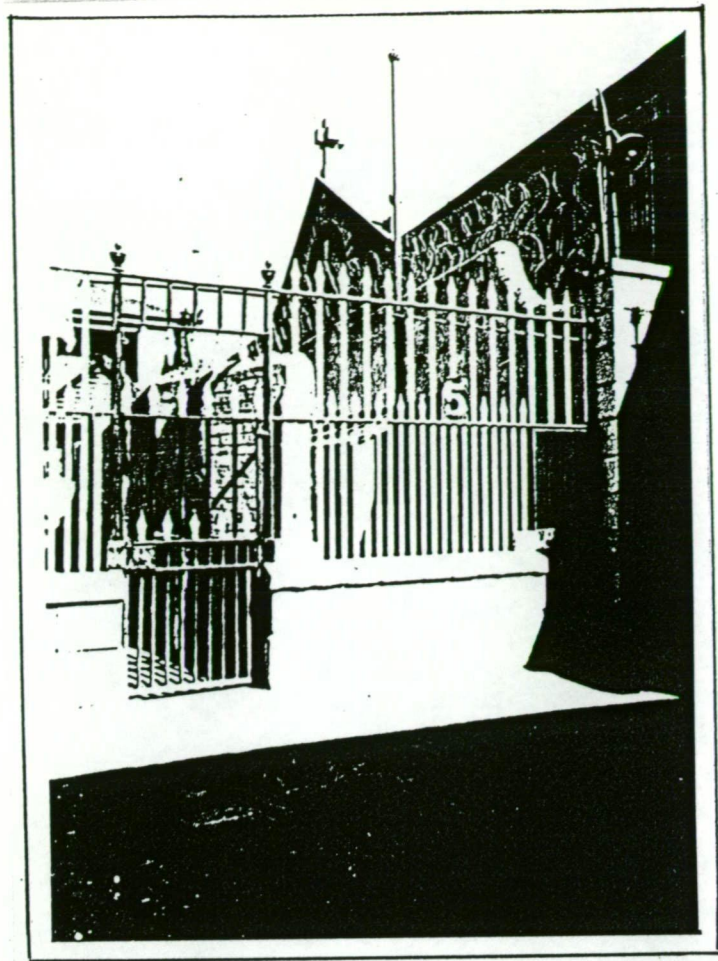
¹⁹⁹ See Plates 7 and 8.

²⁰⁰ D. Borchardt, *Checklist of Royal Commissions, Select Committees of Parliament and Boards of Inquiry*, Pt. II, Tasmania, 1856-1959, (Sydney, 1960), p.41.

²⁰¹ Report of Royal Commissioner on Escapes from Hobart Gaol, 1935.

²⁰² *Ibid.*, pp.1-2.

²⁰³ See Appendix G.



Plates 7 and 8: The Gaol"Front" (AOT)

map giving details of the route of the escapes and indicating which doors were locked and had to be opened with a key.²⁰⁴ Evidence was taken from a number of warders on duty the day of the escape and a number of prisoners who "witnessed" proceedings. Questions of retribution against some of the warders by a few of the prisoners were raised. An inquiry was a chance for old grudges to be settled, but the Royal Commission found no case of misconduct against any of the warders.²⁰⁵

One prisoner, known as Jones, claimed that two of the escapees, Wrathall and Price, had spoken of a possible escape since February 1933 and that four keys had been made for that purpose.²⁰⁶ Both escapees had had considerable freedom within the Gaol- Wrathall was a baker and Price was a wardman, and were let out of their cells far earlier than the other prisoners to do their respective jobs of baking and cleaning. It was thought that both men could have had ample time to check locks and test any keys that had to be made, undetected. The extra keys needed for the escape had been for Hogan's cell, a door of the 'H' division into the workshop and ultimately to gain entrance into the workshop.²⁰⁷ As with the 1926 escapes, it had been an easy matter to exit from the Gaol into Brisbane Street by breaking three padlocks.

Despite the fact that a number of gaol keys had gone missing at various times in the preceding months, prisoner Jones asserted that the men had not stolen those keys, but had obtained their keys by fashioning them within the Gaol. The inmates had obtained a piece of soft lead and fashioned it roughly into the appropriate shape by looking at the keys while they were being carried by the warders. They had then inserted it into the locks that were to be later opened, turned the piece of lead and then observed the "scraped marks" on the soft lead.²⁰⁸ This had then been further indented to avoid obstruction within the lock. An iron key had then been made, copying this pattern by filing a piece of iron, obtained from a "barber's chair in No. 3 yard" after the prisoners had unsuccessfully tried to temper a piece of iron in the tinsmith's shop.²⁰⁹ All the keys had been made in the tinsmithy,²¹⁰ although there had always been two warders on duty, or in the exercise yards, where files had been found secreted in the roofing of the washhouse.²¹¹ To add credence to his claims, prisoner Jones had been able to produce a key made by another prisoner in the

204 See fig. 5.1.

205 Report of Royal Commissioner, 1935, *op.cit.*, p.59.

206 *Ibid.*,p.31.

207 *Ibid.*,p.34.

208 *Ibid.*,p.31.

209 *Ibid.*,p.49.

210 See Plate 9.

211 *Ibid.*,p.48.

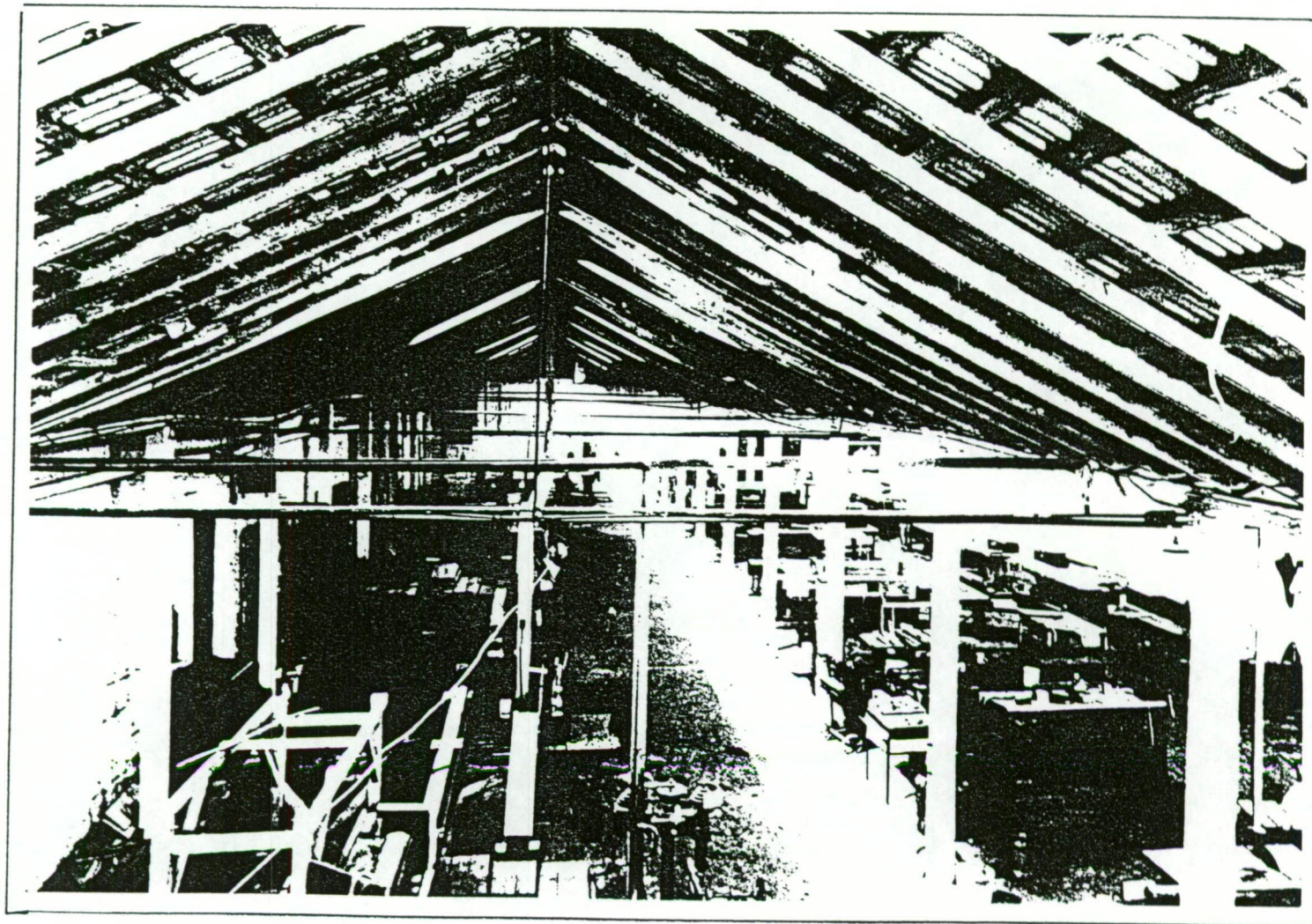


Plate 9: Industrial Workshops (AOT)

tinsmithy.²¹² Colonel Mullen, the Governor of the Gaol, was able to produce three gaol-made keys also as exhibits of the prisoners' skills.

This Report of 1935 recommended an increase in the number of warders on duty, particularly in the 'H' Division area on a Saturday, Sunday and public holidays, pointing out that the number of locks had not impeded the escape along the same route as the 1926 escape.²¹³ Secondly, the Report was critical of the fact that the findings of the 1926 report had not been made known to the Governor of the Gaol, Col. Mullen, who had only recently taken up office shortly after the first escapes on 1 September 1928.²¹⁴ He was unaware that the key of the pattern used by the escaping prisoners opened over one hundred cell doors and gates.²¹⁵ There were also insufficient numbers of warders on duty when searches were made of the men's cells. Only two officers were assigned to search one hundred cells in one hour. This was an impossible task to do thoroughly.²¹⁶ Other deficiencies lay in the fabric of the gaol. The western side and Brisbane Street fences which were in poor condition and the padlock on the outer gate had been broken by the escapees.²¹⁷ Still further, the workshop had a galvanised iron roof and it contained an abundance of materials which could have been used successfully as implements for freeing a sheet of iron from its frame and allowing a person to pass through it.²¹⁸

There were three other instances of malpractice as far as operation of the gaol was concerned. Firstly, a prisoner was assigned the duties of an office clerk to the Deputy Governor. As such, his position took him outside the gaol yards, into the Deputy Governor's office.²¹⁹ His duties entailed conveying information to warders, typing up duty rosters and other clerical work. The clerk employed in 1934 had become "insolent" and needed "straightening out" according to the warders who felt resentful because he "was sheltered by the Deputy Governor."²²⁰ The Commissioner had to conclude that a prisoner holding such a position of power and trust was totally undesirable for the smooth running of the Gaol.

A second issue raised was the question of warders acting as salesmen for the sale of the "silk scarves and mats" made by the prisoners at night in their cells, with the purpose of augmenting their incomes for their

²¹² *Ibid.*, p.49.

²¹³ *Ibid.*, p.54

²¹⁴ *Ibid.*,p.5.

²¹⁵ *Ibid.*, p.55

²¹⁶ *Ibid.*, pp.58-59.

²¹⁷ *Ibid.*, p. 57.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*, p. 64 and Plate 10.

²²⁰ *Ibid.*

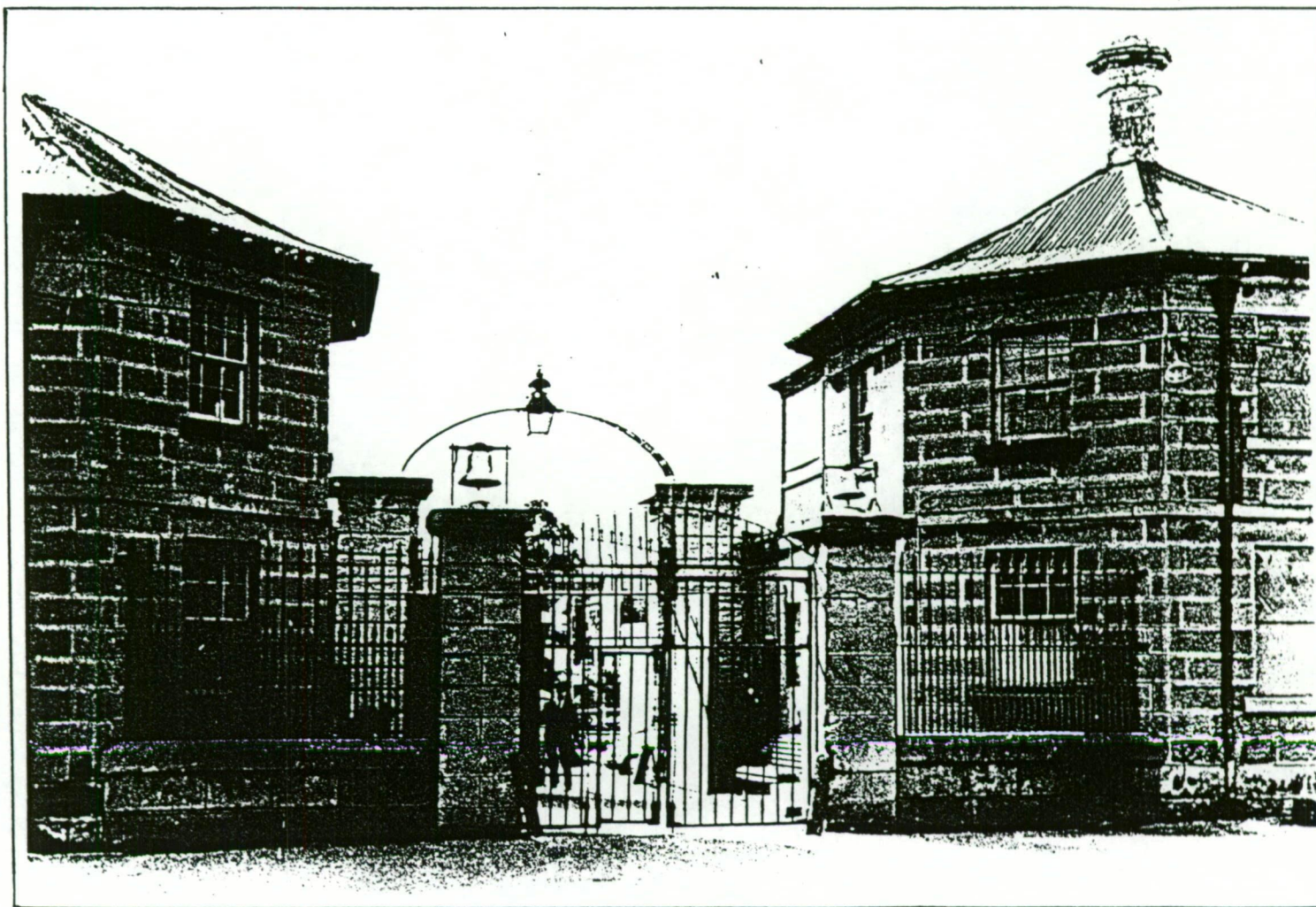


Plate 10: Gaol Entrance (AOT)

dependants.²²¹ This practice was condemned. What had been permissible was that the manufactured articles could be delivered to the Deputy Governor who would arrange for the disposal of them. When they had been sold, the price was received by the Deputy Governor and put towards the maintenance of the prisoner's dependants or retained for the prisoner on his release. The prisoner could decide what he wanted done with the money.²²² A further practice of the prisoners sharing the mess rooms with the warders while the latter took tea was censured and criticised as promoting friendliness and lack of respect towards superiors.²²³

The Report further uncovered evidence of homosexuality between Hogan and Price. Although this had been witnessed by Warder Hevey, it had not been reported to higher authorities, and, as a result, Price was able to threaten the warders with giving him "a fair deal" in return for finding some lost keys to the gaol.²²⁴

Other irregularities in the gaol management concerned the practice by the master mechanic, Mr E.P. Harrison being able to convert keys from one lock to fit a number of locks without the knowledge of the gaol governor.²²⁵ "He said he did this in order to reduce the weight of the bunch of keys."²²⁶ Mr Harrison had been closely questioned about his allowing prisoners in his workshop, unsupervised. He denied this charge.²²⁷

The report referred to the Prison Act of 1868 which conferred no authority on the master mechanic to alter locks or keys without the express authority of the governor of the gaol. Further, the gaol authorities were criticised for not having regular inspection of all important locks in the gaol at regular intervals. This was only ever directed by the Governor and there were times when locks were not examined for up to four months at a time.²²⁸ Laxity could also be seen in the fact that the warders were not reporting incidents of insubordination, threats from prisoners and being spoken to disrespectfully. In 1934, "discipline was at a very low ebb."²²⁹

The final recommendations of the Report were precise and clear. As far as the gaol buildings were concerned, to remove the vulnerable workshop building, raise the height of the western wall and replace the old fence in Brisbane Street were all very necessary. Changes also needed to be made to

²²¹ *Ibid.*, p.66.

²²² *Ibid.*, p.67.

²²³ *Ibid.*

²²⁴ *Ibid.*, p.75.

²²⁵ *Ibid.*, p.75.

²²⁶ *Ibid.*, p.76.

²²⁷ *Ibid.*, pp.45-47.

²²⁸ *Ibid.*, p.76.

²²⁹ *Ibid.*, p.83.

the prison's routine. Locks were to be altered along the route of escape; a modern locksmith should be employed to advise on the most modern forms of lock; that every cell and prisoner should be searched thoroughly daily; that the Gaol keys should remain on the person of the deputy Governor or a warder at all times; and that two new clauses be added to the Prison Act (1868) - one dealing with reporting any defect in the gaol security directly to the Governor; the other forbidding any gaol staff member "to alter in any manner any gaol lock or key...without first obtaining...the authority of the governor of the gaol."²³⁰ With regards to gaol staff, their numbers should be increased; they should be familiar with the provisions of the Prison Act and they should not be allowed to be salesmen for the articles made by the prisoners.

Laxity of the staff was not a contributing factor to a riot in the Gaol on 24 September 1939. A Board of Inquiry which issued its finding in October 1939, pointed the main cause of the riot to "the general faulty layout of the exercise yards."²³¹ Three of the seven yards had direct access to the "gaol top" (a verandah running the length of the first storey of cells).²³² This enable prisoners "to change yards" at will and to "storm" an officer on duty at the top. In addition, the warder on duty in the tower had an impeded view of the yards,²³³ No. 6 and No. 7:²³⁴

Prisoners in Nos. 6 and 7 yards are totally obscured from the observation post in the tower, whilst in all yards, the overhanging balcony and the roof thereof, completely protect the prisoners from observation from this point.²³⁵

The weather shelters and the lavatory buildings also restricted the vision of the warders, as well as the height of the walls between the yards was inadequate and could easily be scaled by the prisoners. The way the doors opened into the yards could expose a warder to " unexpected attack from any prisoner who may be lurking there, hidden by the wall from the observation post."²³⁶ Moreover, the gates on the cross passage could only be opened on one side and this made it necessary for a warder to put his arm through the bars, and thus exposing himself to attack, a broken limb or having his keys stole. The telephone link between the tower and the office was "of primitive

²³⁰ *Ibid.*, p.95

²³¹ Report of Board of Inquiry on Riot at Hobart gaol, 1939, p.1.

²³² See Plate 11.

²³³ See Plate 12.

²³⁴ *Ibid.*,p.3.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

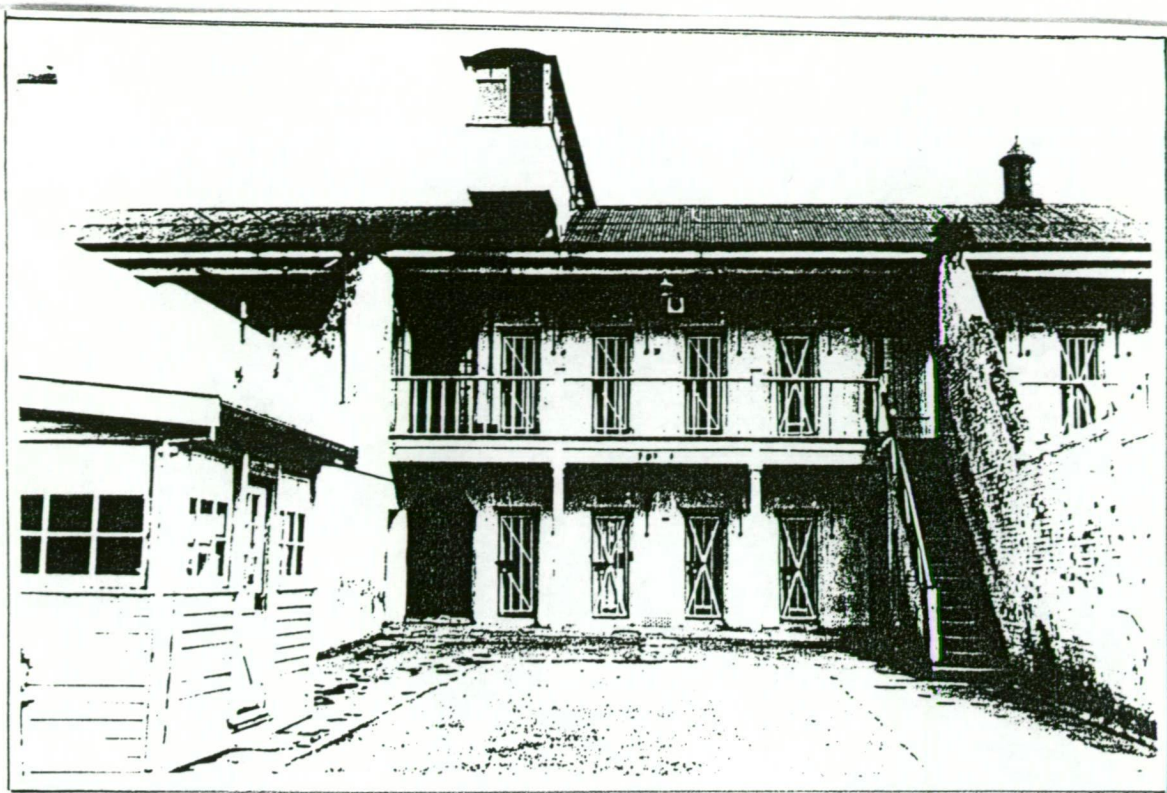


Plate 11: Exercise Yard and Tower (AOT)

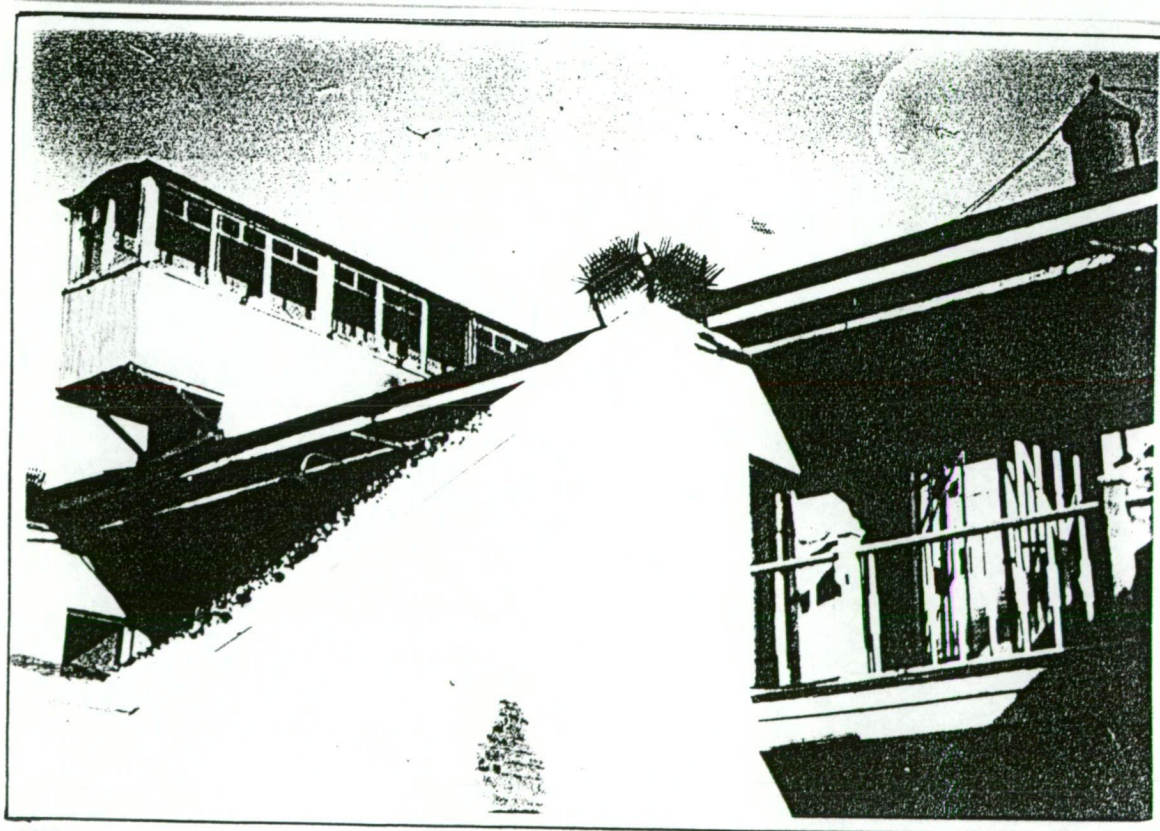


Plate 12: Watchtower (AOT)

design" and "not reliable".²³⁷ This defective telephone system could prove to be "a grave handicap to the warder in the tower in the event of urgent communication being necessary regarding any disturbance below."²³⁸

The causes of the riot in human terms were seen in the "friction caused where some men are placed in authority over others, particularly where the relation of gaoler and prisoner are concerned."²³⁹ More specifically, the investigation showed up an inconsistency in the observation of rules by the warders and the varying degrees of discretion which the warders showed to the prisoners. This was the main grievance of prisoner C.T. Robinson, who blamed the riot on warders Boon and Hull "for their vindictiveness and unfair methods of dealing with inmates."²⁴⁰ Some prisoners were allowed to change yards, others were not. Warder Boon taunted the men with name calling while Warder Hull's mistreatment of the adolescent boys caused constant ill feeling among the prisoners. Hull joked with them on one occasion and then locked them up for some frivolous complaint on another occasion.²⁴¹ It was the use of some abusive language to a warder following an argument with a prisoner that precipitated the immediate riot. The other prisoners joined in by scaling their yard walls, and brooms and other weapons were used in the fray. Order was restored only after Warder Boon fired a warning shot. The *Mercury* reported that one prisoner was shot in the leg and the warder on duty in the tower was injured seriously, presumably by one of the prisoners' projectiles.²⁴²

As the parameters of this 1939 Report did not include the building of a new gaol, only the improvement for the old one was suggested. These included removing the multiple stairways to the balcony; placing grid wire across many open spaces to protect staff; removing handles from doors; and placing iron spikes on top of the dividing walls between exercise yards.²⁴³ The separation of prisoner types became a more pressing issue. The segregation, detention and separate treatment of the more dangerous type of prisoners could be achieved by building a new prison on the site of the old House of Correction at a cost of £1,000.²⁴⁴ This implied that prison labour would be used as the low cost only covered building materials.

²³⁷ *Ibid.*, p.4.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ Hand written evidence of prisoner C.T. Robinson, 1939, TA 271.

²⁴¹ *Ibid.*

²⁴² *Mercury* 25 September 1935.

²⁴³ Report on gaol Riot, 1939, *op.cit.*, pp.4-5.

²⁴⁴ *Ibid.*, p.5.

The next Royal Commission into the Hobart Gaol, conducted by Mr J.D. Morris was the fullest and most comprehensive inquiry into this institution, for it not only confirmed that the gaol buildings and their layout were deficient, but it also condemned the administration of the Gaol as well. The inquiry, although very critical, was made public. The local press took up the scandalous stories with relish. Questions have to be asked why this report was made public and others were not? Had the public had enough and had joined the push to have the Gaol removed from their backyards at last? Was the press of the day bolder than it had been in the pre-war years? One thing seems certain: the gaol staff could hardly have been instrumental in seeking publicity of the 1942 escapes to add weight to their arguments for a new gaol, for they (the gaolers) were portrayed in an unfavourable light.

In many ways this report became the reference point for future penal reform because it raised several important issues such as the general principles underlying the enlightened treatment of prisoners; education, segregation of the different classes of prisoners; prison industries; treatment of young offenders; prison camps; parole; medical care and the care of mental defectives. It is clear from this report that the issue of rehabilitation and reform had to be taken seriously and absorbed into methods of penology.

A succession of escapes, over three years, precipitated the inquiry which raised questions about the gaol's security and its administration. Charges of laxity, favouritism and maladministration were laid against the Gaol authorities, chiefly against the Acting Deputy-Governor, Mr H.P. Hynes and indirectly against the Acting Governor, Colonel A. Linton, who had succeeded Col. L.M. Mullen as governor when the latter was called upon to direct the reserve forces of Tasmania in World War II. Unfortunately, Col. Mullen died during the enquiry and not all his evidence had been heard.²⁴⁵

Failure to adequately inspect the security of the prison buildings and the prison perimeter were blamed for the escape of prisoner Keep in 1940. Being a young eighteen year old of slim build, he was able to squeeze easily between a large gap in the bars of a window in the old House of Correction ²⁴⁶and then into the governor's fowl yard to his freedom. Other prisoners had escaped through these same windows by simply bending the bars, while another had used the coal cellar.²⁴⁷ The close proximity of Scots Church on this western side, together with the fact that this area was usually deserted and contained trees which screened "an outside person engaged in constructing a means for

²⁴⁵ Report of the Royal Commission on the Hobart Gaol, 1943, p.11.

²⁴⁶ See Plate 13.

²⁴⁷ *Ibid.*, p.13.

scaling the wall",²⁴⁸ was criticised. The ease with which an escape could be effected was obvious, but more importantly the greater ease a person outside the Gaol could enter prison property undetected, caused grave concern Commissioner Morris did not overlook the possibility being smuggled in this way. A bomb blast some twelve years previously had been found to have been made inside the gaol with gunpowder brought into the gaol.²⁴⁹ Morris noted that Justice Clark's recommendations in 1935, to raise the western wall, had not been carried out, although this inaction was probably due to the crumbly nature of the gaol wall.²⁵⁰

Failure to act on another recommendation, to abandon the gate leading from the woodyard into Brisbane Street, allowed for the escapes of prisoners Burles, Maxwell and Trinder on 12 January 1942. They had simply overpowered a lone warder in the woodyard and made their escape over the fences.²⁵¹ Colonel Mullen's reason for not carrying out this recommendation was that a new prison was imminent and the rundown gaol at Campbell Street did not warrant any further expenditure made on it²⁵². Moreover, he pointed out that the barbed wire entanglements placed on top of the fences had been considered a deterrent to future escapes and he had set in place a procedure for the security of warders alone on the woodyard with prisoners. This had not been adhered to in January 1842.

The escapes of prisoners Payne and Waters were not strictly "escapes" in the true sense of the word because they exited freely without hindrance, from the gaol between 22 July 1942 and the 8 August 1942, using the gaol more or less as a boarding house with assured sleeping accommodation. Payne, who was serving fifteen concurrent sentences of five years for false pretences, was the Governor's house servant, a position of trust. Waters, who was serving a life sentence for murder, was the Governor's gardener, a job involving a large degree of freedom. As such, they were given certain privileges which were not accorded the other inmates. They were not housed in the main Gaol but in the old House of Correction. They were not subjected to the same gaol routine as the other prisons:

...their duties were such as to permit their being out of observation for long periods without exciting interest; indeed, no warder was charged with the responsibility of supervising

248 *Ibid.*

249 Letter of Governor Mullen to Sheriff, 26 November 1931. AGD 1/102/19/

250 Report of Royal Commission, 1943, *op.,cit.*

251 *Ibid.*

252 *Ibid.*, p. 14.

them, and they were able to go about the business of making and fitting keys for the street door lock (of the Governor's house) and to come and go through the door almost without interference.²⁵³

The boldness of their escapades was something to behold. Between the 22 July and 8 August 1942, Waters visited six different hotels in Hobart and obtained bottles of whisky and wine, paying for them with false cheques. He also purchased again with a false cheque, a wristlet watch, a pair of sleeve links and a Barling pipe.²⁵⁴ The shopowners who had been duped by the passing of the cheques, subsequently realised they were valueless and searched for the owner, but Waters had used a false name. He had stolen the cheques from a cheque book he had found in Col. Mullen's residence. The cheque book belonged to an absent friend of the superintendent.

Although a number of witnesses had reported seeing Waters outside in the Community, the Gaol authorities has chosen to do nothing. It took police detectives to search the Governor's house to find the wristlet watch, sleeve links, pipe, as well as a false bank pass book and three keys, two, of which would unlock the Governor's front door. Both Waters and Payne were tried in the Criminal Court and charged with escaping, forgery and uttering.²⁵⁵

In the course of this investigation, the story became more remarkable. Payne had formed a relationship with a former female prisoner, Frances Victoria Castles and he proceeded to "court" her by inviting her to see him in the Governor's residence, when the Governor was absent.²⁵⁶ Col. Mullen was absent from time to time for social visits as well as longer periods when he liked to go to the races in Launceston and Melbourne. His successor, Col. Linton being a batchelor,²⁵⁷ was away from his residence more frequently. This gave Payne the opportunity to entertain and no doubt impress his lady friend. Her visits began as a front verandah conversation through an open window.²⁵⁸ As Payne became bolder, she was invited inside the Governor's residence, staying up to two hours at a time. These visits were on a regular fortnightly basis and on Christmas Day, Boxing Day, 1941 and New Year's Day, 1942.

On Frances Castle's birthday, Payne prepared her a surprise birthday celebration, including a birthday cake and high tea in the Governor's dining

253 *Ibid.*

254 *Ibid.*

255 *Ibid.*, p.15.

256 See Plate 14.

257 *Ibid.*

258 *Ibid.*



Plate 13: House of Correction (AOT)

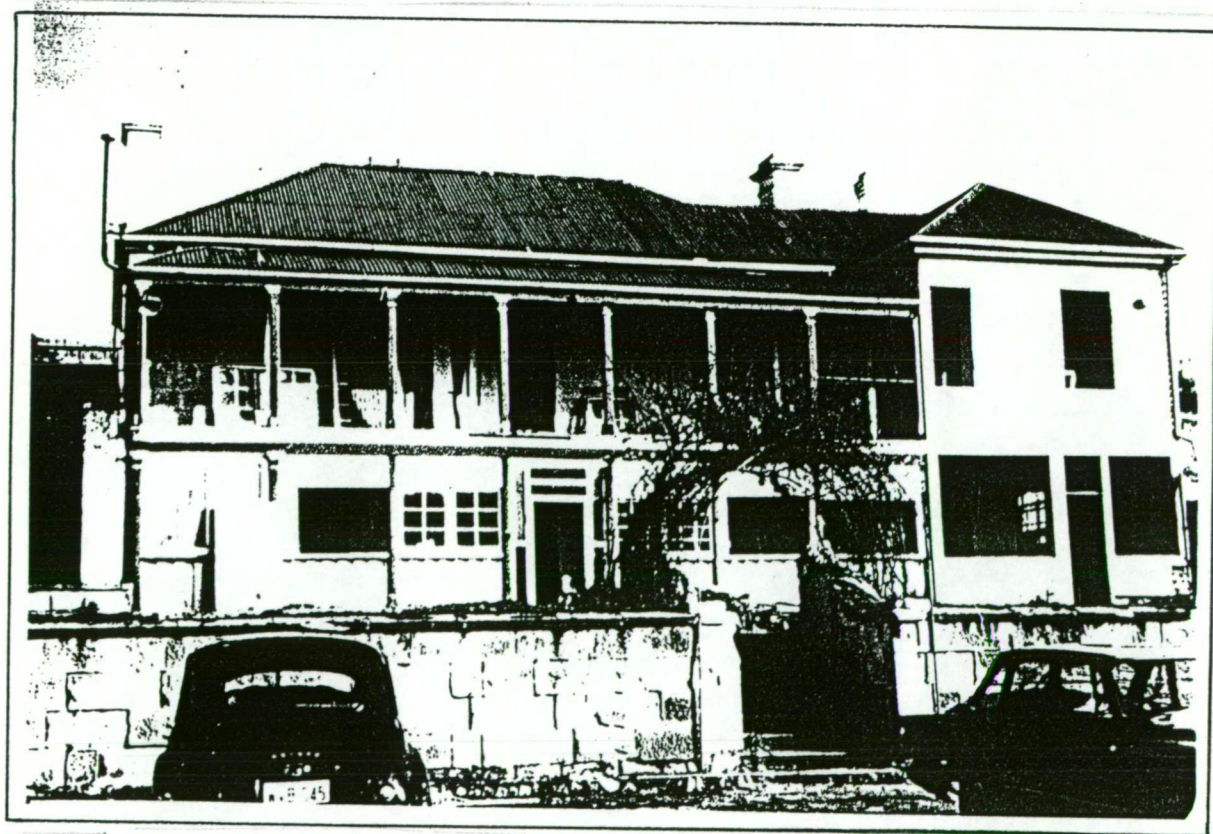


Plate 14: Superintendent's Residence, built across Melville Street (AOT)

room. Still further, undeterred by a "bit of a scare" after Payne and two other inmates, Waters and Hytt, had had a drunken party in the Governor's residence, Castles began to come to the gaol and sleep the night with Payne in his cell.²⁵⁹

The House of Correction (HC) prisoners were locked in the cells by a warder at 7.30 at night. As these prisoners were regarded as "low risk" inmates, the warder never checked the cells, and Castles either hid under the bed or behind the door when the warder made his inspection. Entry into the House of Correction was easily achieved by her coming through the Governor's residence and, on a signal from Payne, moving quickly to his cell undetected by any warder.

The Inquiry pointed to several contributing causes for the "escapes" of Payne and Waters. The obvious weakness in the Gaol security was the ease with which these two men could pass to their freedom through the Governor's residence. Whilst the windows were barred onto Melville Street, the front door was opened with a simple house key, not a gaol key. It was noted that many of these house keys were easily obtainable inside the Governor's house because the keys were left in all the locks. With Payne or Water's knowledge, they could easily convert one of these keys to fit the front door.²⁶⁰

The use of prison labour inside the Governor's house was questioned, but this was preferred to a servant brought in from outside, "since the latter would be a constant source of danger by reason of the ease with which he or she could effect communication with the gaol."²⁶¹ However, Col. Scanlan's daughter, Mrs. McLaren, clearly recalls a female outsider being employed in the governor's home when she was a girl.²⁶²

A third problem was that the governor's servants were not supervised by the prison staff. "No warder would think anything of it if he failed to see (them) all day."²⁶³ They were given permission to cook their own meals in the House of Correction building. They used their freedom to sit on the low roof of the Governor's kitchen and take "a look at the world outside" on Saturday afternoons. Here they also drew up gifts of alcohol and cigarettes on a string thrown over into the Scot's Church yard.²⁶⁴

The report found Col. Linton's batchelor habits aided the activities of Payne and Waters but "the system which permitted them, was there before him, and he seems to have taken over rather than to carry on the gaol as he

²⁵⁹ *Ibid.*, p.16.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² Interview with Mrs June McLaren, 3 July 1993.

²⁶³ Report of Royal Commission, 1943, *op. cit.*, p.17.

²⁶⁴ *Ibid.*

found it while Col. Mullen was on leave than to himself introduce new methods of running it."²⁶⁵

Commissioner Morris rejected out of hand the excuse "that these prisoners were on the honour system and that occasional failures under that systems should not be made the occasion for blaming someone."²⁶⁶ Instead, the Commissioner could largely lay a lot of the blame on the inaction of both governors of the gaol, Mullen and Linton. The former had been told of Castle's visits to Payne, but this was ignored, as was a report from the Overseer of Mechanics, Mr. Thompson, who claimed a key had been thrown over the Gaol wall to prisoner Robinson. Still more bizarre was an incident concerning a missing suitcase belonging to Mrs. Mullen. It was eventually returned to her from the possession of an exprisoner, Rawson, unscratched and unmarked. The only way it could have been removed from the Governor's house was for it to have been carried, but no investigation was carried out.²⁶⁷

The integrity of the gaol warders was questioned. They had not fully informed Col.Linton when he took over from Col. Mullen, the correct way to make his house secure. In taking up his duties, Col. Linton looked to the senior prison officers "to advise him upon matters upon which they thought he should be advised, yet no-one pointed out to him this departure from Col. Mullen's practice."²⁶⁸

The activities of Warder Harold E. Boon were questioned after detectives had searched the Governor's house and found a Tattersall's ticket, a bank pass book with a recent deposit of £50 and a betting slip containing the names of horses.²⁶⁹ After denying any knowledge of all three items, Warder Boon was found to be lying and was accordingly dismissed from service.²⁷⁰

Another Warder, Randall, was questioned over his confiding to prisoners official directives. This "degree of confidence between the warder and the prisoner is highly disturbing."²⁷¹ A third warder was thought to have had a homosexual relationship with Payne on the grounds that the warder was known to sleep in Payne's cell while on duty.²⁷² However, this was never proven and the matter was not pursued.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*,p.18

²⁶⁸ *Ibid.*,p.19.

²⁶⁹ *Ibid.*,p.21.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*,p.23

The Commissioner's full wrath fell on the Acting Deputy Governor, Mr. Herbert Percy Hynes, who replaced the Deputy Governor of the Gaol, Col. John Scanlan. The latter had rejoined the armed forces in March 1940 and had become a POW. Hynes was an elderly, kindly man, "of humane outlook" who "felt sympathy for the prisoners, in whose treatment by the warders he thought little understanding or enlightenment had been shown."²⁷³ He had been a police superintendent but had no experience in penal administration. His kindly methods of treating the prisoners, his obvious favouritism of some prisoners and his reversing some decisions of the warders without logical reason, caused resentment among the warders.

The matter [had] been aggravated by Mr Hynes neglecting to take the warders into his confidence as to what altered policy he desired them to pursue. The result [was] they [were] perplexed: they [felt] that they [were] resented as persons, carrying out inhumane treatment, but [had] no guide as to what was expected of them.²⁷⁴

Apart from not having the backing of the warders, Hynes was far too accessible to the prisoners. His sympathetic hearing of their grievances, combined with the perception on the prisoners' part that there was a lack of co-operation between the Deputy Governor and his Staff, "emboldened" them in their attitude towards the warders generally, with the result that when giving orders, the warders were constantly met with the statement from the prisoner: "I'll see the Deputy."²⁷⁵

Hynes was also guilty of not supervising his men while they were at their posts. As a result, the warders had "become slack in their duties, largely because they [had] the feeling that no one [cared] whether they [carried] them out or not."²⁷⁶ Hynes tried to defend his inaction by saying that all the warders were honourable men and they did not need his constant supervision.

While Hynes was Acting Deputy Governor, the practice of searching the prisoners and their cells was considerably neglected. Again, Hynes defended himself by saying the warders knew the importance of searching and should carry it out without having to be told by him.²⁷⁷ Most prisoners used to be searched quickly, twice a day, at midday and at 3.50 pm. This was called a

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*, p.24.

²⁷⁶ *Ibid.*, p.25.

²⁷⁷ *Ibid.*

"once over". In addition, they were occasionally "strip searched" when they were taken to a receiving room and stripped of all clothes and boots and everything carefully searched. Mr. Hynes did not do this, and as the cells were also not searched, this would provide ample opportunity to plant pieces of metal and files in the prisoners' cells later to be fashioned into keys. In addition, files, hacksaws, keys and other weapons were known to have been thrown over the gaol wall from time to time, and without a proper search, these items went undetected.²⁷⁸

Finally, favouritism shown to certain prisoners by Mr. Hynes caused resentment among the warders. One prisoner, Estcourt, was renowned for this acts of violence and threats against fellow prisoners and warders, but he was favoured by Mr. Hynes to the point where the prisoner became undisciplined. Hynes claimed the man needed understanding and kindness, not the rough treatment meted out to him by the other warders. In this Hynes was shortsighted:

A more experienced administrator would have realise that he could not get efficiency as long as those upon whom he depended for support were in fear of bodily injury from riot or from Estcourt's accessibility to lethal weapons, and some consideration of their viewpoint would seem to have been called for. Mr. Hynes seems not to have admitted to himself that his method might not be the right one.²⁷⁹

The administration of the Acting Governor Col. A. Linton, was also called into question by the warders. He was a man of "enlightened and human views upon the treatment of prisoners" and always impressed upon the prisoners that their grievances would be given a fair hearing.²⁸⁰ However, he did little to remedy many of the weaknesses that appeared in the gaol system during his caretaker administration. The breaches in the prison walls, his views on his deputy under siege from the warders, all went unnoticed as well as appearing inconsistent with this treatments of prisoners. Thus, for example, a prisoner in solitary confinement received normal meals and a young male defective was returned from the New Norfolk Mental Hospital after a deputation of prisoners to Linton complained.²⁸¹ It was recommended that Mr. Hynes should be replaced "by a man of his humane outlook but with

²⁷⁸ *Ibid.*, p.26.

²⁷⁹ *Ibid.*, p.28.

²⁸⁰ *Ibid.*, p.30.

²⁸¹ *Ibid.*

sounder judgement in administration and capable of securing the co-operation of the staff."²⁸²

The 1943 Royal Commission was significant in penal history because in many ways it challenged the status quo, not the least the need for a well built, secure prison, but in addition, it questioned the urgent need for reformatory measures in prison discipline and methods. It also reflected the public's changed view of the prisoner-a humane view and one of hope for the prisoners' future. The past twenty years had been turbulent ones for the Hobart Gaol. It had been the focus of many public enquiries. There was little the Tasmanian public did not know about this aged monstrosity in their midst. It had taken one hundred and fifty years for Hobart to have built a functional prison, where the prisoner had some hope to build a new life.

Is there not in every human soul...a primitive spark, a divine element , incorruptible in this world, immortal in the next, which can be developed by good, kindled, lit up and made resplendently radiant and which can never be extinguished?

Victor Hugo *Les Misérables*

²⁸² *Ibid.*

CONCLUSION

These insights into several episodes in the history of the Hobart Gaol are both fascinating and challenging, some may even say appalling. On the one hand, questions must be asked why it took the Tasmanian Government so long to act and remove the prisoners from the gaol into accommodation more in keeping with human kind. "A decent farmer wouldn't have kept pigs in the Campbell Street Gaol," said a former Deputy Governor of the Gaol.²⁸³ Granted, war had intervened on one occasion, and there was always the belief that a move was imminent, so why spend more capital on a decaying shell of a building?

On the other hand, the Tasmanian Government, very early in the 1920s, adopted many progressive reforms as far as the treatment of prisoners was concerned. Prisoners' psychological profiles were tested so that they could be segregated and given the best treatment to rehabilitate them. In every prisoner there is Victor Hugo's "primitive spark...that can be developed by good".

By 1930, it was accepted penological philosophy that the best way to reform a prisoner was to place him in the open air and set him to work in a purposeful way. Self respect and self worth were seen as essential if prisoners were to take their place in society again as useful members. Gaol Farms were regarded as progressive and advantageous for both the prisoner and society. The Kilderry Gaol Farm very quickly became a success, both from an economic and reformatory point of view. Within a short time, it had surpassed its original purpose and had become an exhibition model farm for efficient management, stock breeding and seed experimentation.

Parole, another reform, was seen to be a valued, positive influence in restoring the prisoner to normal civilian life. The different gaol governors recorded the success of this humane practice. Yet there remained the great

²⁸³ D. Hornibrook, *SEM* 6 November 1982.

stumbling block of the inefficient building during the forty odd years of this study. The use of condemned cells such as those in the old "HC" building when the prison was full, was both puzzling and repugnant.

Herein lies the contradiction. How could a government be so forward thinking in the theoretical aspects of penological reform, but be so backward in providing the physical means to achieve those reforms? In many ways the old Campbell Street Gaol was like an aged arthritic- spritely in spirit, desirous of being useful, but crippled in the extreme by a crumbling body. The Hobart Gaol's physical well-being had long passed even before the period of this study.



PROCLAMATION.

By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight, Captain-General and Governor-in-Chief of the Island of Tasmania and its Dependencies.

I, SIR HENRY EDWARD FOX YOUNG, Knight, Captain-General and Governor-in-Chief of the Island of Tasmania and its Dependencies, in exercise of the power conferred upon me by "The Prison Regulation Act," do, by this my Proclamation, notify, proclaim, and appoint that, on and after the first day of January, one thousand eight hundred and fifty-seven, all that portion of the buildings (such buildings being buildings within the same enclosure as required by the said Act) situate at the angle of Brisbane and Campbell-streets, Hobart Town, in this Island, known as the Male Penitentiary, which is bounded as follows—on the north west by one hundred and fifty-one feet three inches south-westerly along Brisbane-street commencing at its angle with Campbell-street, on the south west by two hundred and eighty-nine feet six inches south-easterly along land occupied by or belonging to William Gunn, thence on the south east by a line of one hundred and forty-eight feet extending north-easterly to a point on Campbell-street distant two hundred and eighty-nine feet six inches from its angle with Brisbane-street, and thence on the north east by two hundred and eighty-nine feet six inches north-westerly along Campbell-street to the point of commencement, and all which portion of such buildings is delineated and coloured pink on the plan annexed to a copy of this Proclamation, and deposited in the office of the Surveyor-General, shall be a Gaol and House of Correction under the order and control of the Sheriff.

Given under my hand and seal-at-arms, at Government House, Hobart Town, in this Island, this twenty-ninth day of December, one thousand eight hundred and fifty-six.

H. E. F. YOUNG.

By His Excellency's Command,

W. CHAMP, Colonial Secretary.

Appendix B

Evolution of the Town : 1803-1847

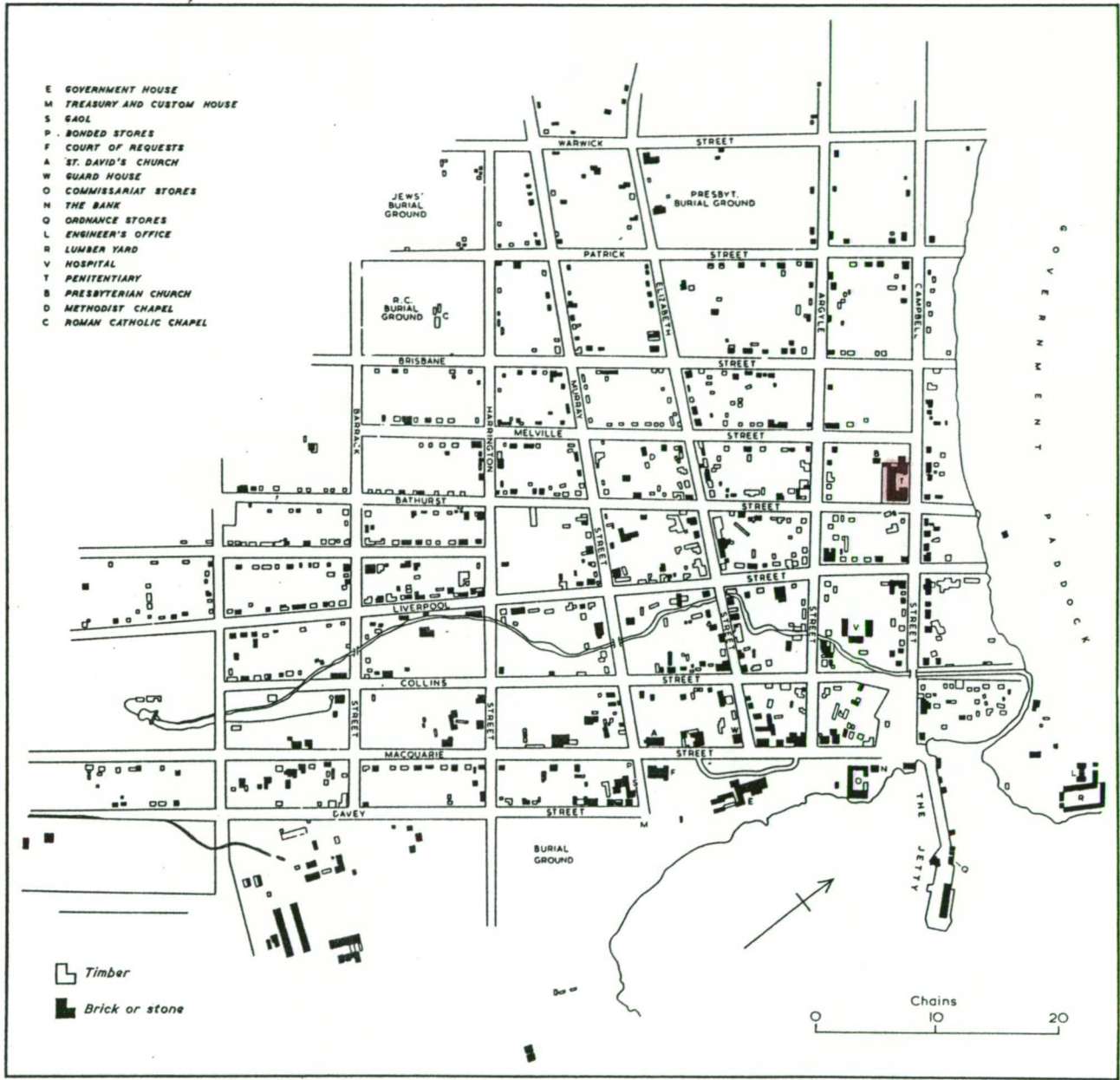


Fig. 4.2 Plan of Hobart Town circa 1829, showing construction materials of the buildings (Hobart No. 5, Lands Dept. The distribution of buildings is almost identical with the Plan of Hobart 1829, *Intercolonial Exhibition of Industry Chart 1866*, Lands Dept.).

Reference: R.Solomon, *op. cit.* p.42.

Appendix C

Hobart Town circa 1847: A Colonial Capital



Sprent's survey of Hobart Town 1841. (Composite of Sprent's plans, Lands Dept., except port area inside the dashed line—Hobart plan No. 19, Lands Dept., and the military barracks buildings—various sources.)

APPENDIX D

Psychological Classification of Prisoners.

Division	Class	Description
A	1	Low and high grade defectives.
B	2	Defectives with marked psychopathic functioning.
	3	Boarderline and normals with marked psychopathic functioning.
C	4	Borderline, inferior normals with normal mental functioning capable of unskilled and semi-skilled work.
	5	Average normals with average mental functioning, capable of industrial or clerical employment.
D	6	Habitual Criminals.
E	7	Adolescents.
	8	Remand Prisoners.

APPENDIX E

Table of Classification of Offences with Mental Levels of Prisoners.

Offences	Defectives	Borderline	Normals	Totals
Against Property:				70
Larcency, vagrancy	17	11	7	35
Burglary, receiving	_____	10	10	20
Forgery, Embezzlement	_____	5	10	15
Against the Person:				21
Assault, resisting	3	6	7	16
Murder	3	1	1	5
Other Offences				26
Sodomy, Assault	11	3	6	20
Bigamy, Maintenance	_____	_____	6	6
Totals	34	36	47	117

Appendix F

The following table shows the median brain capacity of the Tasmanian prisoners, classified according to the class of crimes they have committed, and compared with Professor Berry's medians for similar Victorian prisoners:—

Number of Tasmanians.	Class of Crime.	Median Brain Capacity.		Number of Victorians.
		Tasmanian.	Victorian.	
5	Murder and manslaughter	1402cc.	1456cc.	11
29	Larceny and vagrancy	1412	1432	144
25	Sex offences	1440	1440	56
15	Assault, wounding, &c.	1456	1425	15
9	Forgery, uttering	1487	1459	14
13	Burglary, entering	1493	1435	26
4	Embezzlement	1499	1475	5

The above table indicates that, in general, brain capacity show some positive relation with the nature and mental grade of the crime. Sex and violent crimes, as well as petty thieving, appear generally to go with a brain capacity below the median for normality.

T A S M A N I A.



1868.

ANNO TRICESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 11.

AN ACT to consolidate and amend the Law
relating to Prisons. [17 September, 1868.]

WHEREAS it is expedient to consolidate and amend the Law PREAMBLE.
relating to Prisons: Be it therefore enacted by His Excellency the
Governor of *Tasmania*, by and with the advice and consent of the
Legislative Council and House of Assembly, in Parliament assembled,
as follows:—

Commencement of Act.

1 This Act shall come into operation on and after the First day Commencement
of January, 1869. of Act.

Short Title.

2 In referring to this Act it shall be sufficient to use the expression Short Title.
"The Prison Act, 1868."

Repeal.

3 After the commencement of this Act, the Acts and parts of Acts of Repeal.
the Legislature of this Colony set forth in the Schedule (1) to the
extent therein specified shall be hereby repealed, but no repeal hereby
enacted shall affect:—

1. Any order made, sentence passed, or other act or thing duly
done under any Acts hereby repealed:

Prison Act, 1868.

2. Any right or privilege acquired, any security given, or other liability incurred under any Act hereby repealed :
3. Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed :
4. The power of detaining or dealing with any person in lawful custody or with any Ticket-of-Leave holder at the commencement of this Act :
5. The power of committing persons to any gaol or house of correction except in so far as the same may be altered by this Act.

Interpretation.

Interpretation.

4 In this Act the following expressions shall have the meanings hereby assigned to them unless inconsistent with the context; that is to say,—

“Prisoner.”

“Prisoner” shall mean every person who now is or shall hereafter be detained in lawful custody in this Colony under any sentence of Transportation, Penal Servitude, or Imprisonment with or without hard labour or solitary confinement, passed upon him either in this Colony or elsewhere, by any Court or by any Justice or Justices of the Peace being thereunto lawfully authorised.

“Imprisonment.”

“Imprisonment” shall mean every sentence of Imprisonment, Penal Servitude, or Transportation passed or to be passed.

Gaols, how constituted, &c.

Existing Gaols, &c. to be Gaols within the meaning of this Act.

5 Every Gaol and House of Correction existing and used as such at the time this Act comes into force shall be deemed to be a Gaol within the meaning of this Act; and every Gaol within the meaning of this Act shall be deemed to be a House of Correction and a common Public Gaol.

Power to establish and discontinue Gaols.

6 It shall be lawful for the Governor from time to time, by Proclamation, to appoint and establish Gaols and to define the limits or boundaries thereof; and in like manner to alter the limits or boundaries or to discontinue any Gaol which may be in existence at the time this Act comes into force, or which may at any time thereafter be appointed or established.

Gaols may be for persons of a particular class or sex, or for all persons and both sexes.

7 It shall be lawful for the Governor from time to time, by Proclamation, to declare that any Gaol shall be for the exclusive reception of any specified class or sex of persons; and in case of every Gaol as to which no such declaration is made, or so far as any such declaration shall not extend, such Gaol shall be a common Public Gaol for the reception of all classes and both sexes of persons who may be lawfully imprisoned or detained in a Gaol or House of Correction either by way of punishment, detention, or otherwise.

Gaol Regulations.

Governor may make Gaol Regulations.

8 The Governor in Council may from time to time make Regulations for the management of Gaols, and for the regulation and control of persons confined or detained therein, and as to the diet and clothing of all such persons, and may from time to time alter or rescind any such

Prison Act, 1868.

Regulations; and all Regulations relating to any Gaol or House of Correction which are in force when this Act takes effect shall be deemed to have been made by the Governor in Council in accordance with the provisions of this Act.

Officers of Gaols.

9 Every Gaol shall be under the order and control of the Sheriff, and for every Gaol there shall be a Gaoler and such Warders and Officers as may be necessary, and all such Officers shall be appointed by the Governor and shall hold office during pleasure; and all Gaolers, Warders, and Officers of any Gaol or House of Correction who hold any office when this Act comes into force shall be deemed to have been appointed to such office in accordance with this Act. Officers of Gaols.

10 Every person confined in a Gaol shall be deemed to be in the legal custody of the Gaoler, and the Sheriff shall not be liable for the escape from Gaol of any person other than a Debtor. Custody of Prisoners.

11 The Gaoler of any Gaol in which Debtors are confined shall give security to the Sheriff for their safe custody to such amount as may be determined by agreement, or in default of agreement may be settled by the Governor; and any such security may be given to the Sheriff and his successors in office, and shall be deemed to enure to the benefit of each succeeding Sheriff in the same manner as if he were individually named therein. Security to Sheriff.

12 Every person acting in the capacity of Warder, Constable, or Overseer, or in any similar capacity in any Gaol or other place of confinement where any person is detained in lawful custody or control, or at any place where any prisoner is directed to labour, or employed in escorting any prisoner or person from any one Gaol or place of confinement to another, or to or from any place of labour, shall, for the purposes of preventing the escape of and otherwise restraining any prisoner or person so detained, exercise and enjoy all the powers, privileges, and immunities which the Sheriff or any Gaoler now has by Law for such purposes. Warders, &c. to have powers, &c. which Sheriff and Gaolers now have by Law.

Justices to visit Gaols.

13 The Justices of the Peace in each District assembled in General or Quarter Sessions which shall be first holden in the month of *April* in each year, shall nominate Two Justices to be Visiting Justices for the ensuing year for every Gaol under the control of the Sheriff within such District, each of whom shall personally visit such Gaols at the least once in every month, or oftener as occasion shall require, for the purpose of examining into the treatment, behaviour, and condition of the persons confined therein, together with the state and condition of the Gaol; and such Justices shall hold office until their successors are appointed. Appointment and power of Visiting Justices.

14 Every Justice of the Peace may, as often as he thinks fit, enter and examine any Gaol within the District in which he usually resides, and may hold intercourse, not being contrary to the Gaol regulations, with any prisoner therein. Every Justice may visit Gaols.

Removal of Prisoners.

15 All persons lawfully detained in any Gaol may from time to time be removed from one Gaol to another by order of the Sheriff. Removal of persons from one Gaol to another.

*Prison Act, 1868.***How removed.**

16 Upon the receipt of any such Order of Removal by the Gaoler having the custody of the person to whom the same applies, such Gaoler shall forthwith deliver such person to such Warders, Constables, or persons as may be empowered to receive the person ordered to be removed, and the receipt in writing of such Warders, Constables, or persons or any of them shall be a discharge to such Gaoler, and every person whilst being so removed shall be deemed to be in lawful custody and control.

Persons removed to be delivered to Gaoler with a Certificate setting forth sentence, &c.

17 Every person removed as aforesaid from one Gaol to another shall be delivered to the Gaoler or Officer in charge of such latter Gaol, together with a Certificate under the hand of the Sheriff setting forth the offence, if any, of which such person has been convicted, the sentence passed upon such person by the Court before which he is convicted, and the date at which such sentence was passed, or other the cause of the detention of such person, and also setting forth the Christian names and surname of such person; and such Certificate shall be receivable in all Courts whatsoever without further proof as evidence that the person therein named was lawfully ordered to be there detained.

Person may be removed from Gaol in case of sickness.

18 In case any person confined in any Gaol is afflicted with any dangerous illness or any infectious distemper, the Sheriff may, if he deems it necessary, cause such person to be removed from Gaol to a public Hospital, or elsewhere, and every person so removed shall nevertheless be deemed to be under lawful custody and control within the meaning of this Act.

Employment of Prisoners.

Labour to be ordered by Sheriff.

19 The Sheriff may from time to time determine the labour at which Prisoners liable to be kept at hard labour shall be employed, and such Prisoners may be employed in or out of Gaol, and when so employed out of the boundaries of any Gaol they shall nevertheless be deemed to be in Gaol and under lawful custody and control within the meaning of this Act.

Setting prisoners to work in certain cases.

20 Every prisoner under sentence of imprisonment without hard labour, or for non-payment of any penalty, and who does not maintain himself, may, by order of a Visiting Justice, be set to some work or labour within the Gaol not of a severe nature, to be specified by such Justice; and no such prisoner who is of ability to contribute by such work or labour towards his own subsistence, and refuses or neglects to do so, shall have any claim to the ordinary prison allowance at the expense of the public, but may be fed on bread and water only.

Offences in relation to Gaols.

Prisoner under sentence exceeding four years escaping, &c., guilty of felony.

21 If any Prisoner detained under any sentence of imprisonment for a period of more than Four years, before the expiration thereof, escapes or attempts to escape from lawful custody or control, he shall be guilty of Felony, and being summarily convicted thereof before any Two Justices of the Peace shall be imprisoned for any period not exceeding Five years, and may be ordered to be kept in chains during the whole or any part of such period, and may also be ordered to be kept in solitary confinement for a term not exceeding One month of such period.

Prison Act, 1868.

22 If any person under lawful custody and control, other than those specified in the last Section, escapes, or attempts to escape, from such lawful custody or control he shall be guilty of a Misdemeanor, and being summarily convicted thereof before any Two Justices of the Peace shall be imprisoned for any period not exceeding Three years, and may be ordered to be kept in chains during the whole or any part of such period, and may also be ordered to be kept in solitary confinement for a term not exceeding One month of such period.

Persons under lawful custody escaping, &c., guilty of a misdemeanor.

23 If any person in any Gaol, or who is under lawful custody or control, assaults or attempts to assault any Gaoler, Warder, Constable, Overseer, or any other person acting in any similar capacity, with intent to escape from lawful custody or control; or if any such person being armed with any weapon or instrument escapes or attempts to escape from lawful custody or control, he shall be guilty of Felony, and being convicted thereof shall be liable to be imprisoned for Life, or for any term not exceeding Fifteen years.

Persons assaulting Gaoler, &c. or being armed with intent to escape.

24 Every person who aids any person confined in a Gaol, or who is under lawful custody or control, in escaping or attempting to escape therefrom, or rescues or attempts to rescue any such person, or who with intent to facilitate the escape of any such person conveys or causes to be conveyed into any Gaol or to such person any arms, instrument, mask, dress, or other disguise, or any letter or any other article or thing, shall be guilty of Felony, and on conviction shall be liable to imprisonment with hard labour for a term not exceeding Three years.

Aiding to escape.

25 When any Prisoner escapes from lawful custody and control, the sentence under which such prisoner was detained when he so escaped shall not be deemed to have expired during the time he remained unlawfully at large; and when such offender is apprehended he shall serve and fulfil so much of such sentence as was not served and fulfilled when he so escaped, as well as any sentence that may be inflicted for such escape.

When Prisoner escapes his original sentence shall not be deemed to have expired while he is at large.

26 When any Prisoner having escaped from lawful custody and control commits any offence not punishable under this Act, the sentence passed upon him for such offence shall not be deemed or taken to be a portion of any sentence which may be passed upon him under this Act, but shall be cumulative upon any such last-mentioned sentence, and shall commence at the period when such last-mentioned sentence has been fully and completely served and fulfilled.

When Prisoner escapes, the sentence for any offence not punishable by this Act shall be cumulative upon sentence under this Act.

27 Every person who, contrary to the Regulations of the Gaol, brings or attempts by any means whatever to introduce into any Gaol any food, spirituous or fermented liquor or tobacco, and every Officer of a Gaol who suffers any food, spirituous or fermented liquor or tobacco to be introduced, sold, or used therein contrary to the Gaol Regulations, on conviction shall be liable to imprisonment for a term not exceeding Six months, or to a penalty not exceeding Twenty Pounds, or both in the discretion of the Justices; and every Officer of a Gaol convicted under this Section shall, in addition to any other punishment, forfeit his office and all arrears of salary due to him.

Punishment for carrying spirituous liquors or tobacco into Gaol.

28 Every person who contrary to the Regulations of a Gaol conveys or attempts to convey any letter or other document or any article whatever not allowed by such Regulations into or out of any Gaol shall, on conviction, incur a penalty not exceeding Ten Pounds, and if an Officer

Punishment for carrying letters into and out of Gaols.

Prison Act, 1868.

of the Gaol shall forfeit his office and all arrears of salary due to him; but this Section shall not apply in cases where the offender is liable to a more severe punishment under any other provision of this Act.

Penalty for
harbouring, &c.
Prisoners.

29 If any person without lawful excuse harbours, conceals, employs, or provides with lodging, food, clothes, money, tobacco, wine, or any spirituous or fermented liquor, or receives or allows to remain upon his premises any prisoner or person who has escaped from lawful custody or control, or any prisoner employed upon any public works, he shall forfeit and pay a penalty of not more than Twenty Pounds.

Persons escaping
to be tried at the
place from which
they escaped.

30 Whenever any person escapes from lawful custody or control, and is apprehended for such offence at any place other than the place from which he escaped, he shall not be tried for such offence at the place at which he is apprehended, but shall forthwith be removed to the place from which he escaped, there to be dealt with according to Law.

Justices may
grant warrants to
search houses for
escaped Prisoners.

31 Upon information on oath being made before any Justice of the Peace by any person that he believes that some escaped Prisoner or person is in or on any particular house or place, it shall be lawful for such Justice (if he thinks it expedient so to do) to grant his warrant to any constable to enter and search such house or place; and such constable may, under such warrant, break open any doors if not opened within reasonable time after demand, and may apprehend any escaped prisoner found there, who shall be dealt with according to law: Provided that no house or place shall be searched or entered under any such warrant in the night time, unless by or in the presence of some superior Officer of Police not of a lower rank than a Sergeant.

Apprehension of
persons suspected
to be escaped
prisoners.

32 If any person has reasonable cause to suspect that any person is a prisoner or person who has escaped from lawful custody and control, it shall be lawful for such first-mentioned person immediately (either alone or by any other person in his aid or authorised by him), without a warrant, to apprehend such suspected person and to take him, or cause him to be taken so soon as conveniently may be, before any Justice of the Peace to be dealt with according to law; and such Justice may cause such apprehended person to be detained in custody for such reasonable period as is necessary for the purpose of ascertaining whether in fact such person is a prisoner or person who has escaped from lawful custody and control or not.

Punishment of
offences in Gaol.

33 A Justice of the Peace shall have power to hear complaints respecting any of the offences following; that is to say,—

1. Disobedience of the Regulations of the prison, or of the lawful orders of any person having lawful authority over such person, by any person confined or detained therein:
2. Common assaults by one such person on another:
3. Profane cursing and swearing or indecent language by any such person:
4. Indecent behaviour by any such person:
5. Insulting or threatening language by any such person to any other person, or riotous or disorderly conduct.
6. Idleness or negligence at work by any prisoner:
7. Wilful mismanagement of work by any prisoner:

Prison Act, 1868.

8. Absence without leave from the appointed station or place of work of any prisoner :

9. Larceny, feloniously receiving or embezzling by any such person any chattel of a value not exceeding Five Pounds.

10. Drunkenness or other misconduct by any such person.

and may punish any offender by extending for any period not exceeding One year any then existing sentence of such offender, or by solitary confinement for any period not exceeding One month ; and the proceedings may be in the form or to the effect in the Schedule (2). Proceedings.

34 The Keepers of the Gaols for Males and Females at *Hobart Town* and *Launceston* respectively shall severally have power to hear complaints respecting any of the offences following ; that is to say,— Powers of Gaolers in *Hobart Town* and *Launceston*.

1. Disobedience of the Regulations of the Gaol by any person confined or detained therein :

2. Common assaults by one such person on another :

3. Profane cursing and swearing or indecent language by any such person :

4. Riotous or disorderly conduct or indecent behaviour by any such person :

and may punish any offender—

1. By keeping him in close solitary confinement, and fed on bread and water only :

2. If a male, by placing him in chains :

3. Or, if a male, by both of the punishments before mentioned :

Provided, that no such punishment shall exceed in duration the term of Three days, and every such punishment shall be reported to the Visiting Justices upon their next visiting the Gaol.

35 Every sentence passed upon any person under the provisions of this Act shall take effect forthwith ; and the period passed under such sentence shall not be deemed or taken as part of the term of the sentence under which such person if a prisoner is then detained, but the last-mentioned sentence shall be extended for the period of every sentence passed under this Act. Sentences under this Act to take effect forthwith, and original sentence extended accordingly.

36 When any prisoner under a sentence of imprisonment for any term exceeding three years commits any felony or misdemeanor not punishable by death, or punishable by imprisonment for any period exceeding Six years, any two Justices of the Peace sitting in Petty Sessions may take cognizance of the same in a summary way, and may extend the sentence of the offender for any period not exceeding Three years ; and the proceedings may be in the form or to the effect in the Schedule (3.) ; and shall be signed by the Justices who hear and determine the charge or complaint. Summary punishment of prisoners committing certain offences. Proceedings.

Tasman's Peninsula.

37 All buildings and enclosures now used or which may hereafter be used on *Tasman's Peninsula* for the confinement or detention of prisoners shall be deemed to be Gaols, and all prisoners who are lawfully on *Tasman's Peninsula* at the time this Act comes into force, Buildings on *Tasman's Peninsula* to be deemed Gaols, and prisoners there to

Prison Act, 1868.

be deemed in custody in Commandant.

Powers of Commandant.

As to Regulations.

or who shall at any time thereafter be lawfully sent there, shall be deemed to be in the custody and under the control of the Commandant or other Officer in charge, and of all other officers, constables, and other persons under him; and such Commandant and other persons shall, with respect to all prisoners who may at any time be on *Tasman's Peninsula*, have all the powers incident to the offices of Sheriff and Gaoler; and nothing in this Act shall affect any Regulations now in force as to prisoners on *Tasman's Peninsula*, and the Governor is hereby empowered from time to time, anything in this Act to the contrary notwithstanding, to make and at pleasure to vary or rescind such regulations as he deems necessary for the control and management of such prisoners as may from time to time be detained in custody on *Tasman's Peninsula*.

Escape from *Tasman's Peninsula*.

38 Every person who in any way aids or assists or attempts to aid or assist any prisoner in escaping or attempting to escape from *Tasman's Peninsula* shall be deemed to assist such prisoner's escape from Gaol, and shall be liable to be punished accordingly.

Punishment of persons who without lawful cause are in any ship, &c., communicating with *Tasman's Peninsula*.

39 If any ship, vessel, or boat of any description enters, touches at, or communicates with any part of *Tasman's Peninsula* or with *Slopen Island*, and if any ship, vessel, or boat of any description is found or discovered within One mile of any part of *Tasman's Peninsula*, every person found in or upon any such ship, vessel, or boat shall, unless the person in command of any such ship or vessel, or sailing any such boat, is the holder of a licence from the Governor, or is in the employment of Her Majesty the Queen, or unless such person was obliged from stress of weather or other case of unavoidable necessity, (the proof of which shall be on the person accused) to enter, touch at, or communicate with any part of *Tasman's Peninsula* or with *Slopen Island*, or to be within One mile of any part of *Tasman's Peninsula*, forfeit and pay a penalty not exceeding One hundred Pounds nor less than Ten Pounds; and any person who sees any such offence committed may lawfully forthwith, and without warrant, arrest any such person, and take him before the Commandant or any Justice of the Peace, and it shall be lawful for such Commandant or Justice of the Peace to imprison any such person as aforesaid until such person can be conveniently sent to *Hobart Town*, and to commit such person to the Gaol at *Hobart Town* until the case is there enquired into and determined; and any such ship, vessel or boat as aforesaid, may lawfully be seized and detained until such case has been so enquired into and determined as aforesaid.

Punishment of persons found at *Tasman's Peninsula* without lawful cause.

40 If any person is found in or upon any part of *Tasman's Peninsula* without lawful cause, (the proof of which shall be on the person accused), he shall forfeit and pay a penalty not exceeding One hundred Pounds, nor less than Ten Pounds; and any other person may lawfully forthwith, and without warrant, arrest any such person and take him before the Commandant or any Justice of the Peace, and it shall be lawful for such Commandant or Justice of the Peace to imprison any such person as aforesaid until such person can be conveniently sent to *Hobart Town*, and to commit such person to the Gaol at *Hobart Town* until the case is there enquired into and determined.

Persons may be licensed to proceed to *Tasman's Peninsula*.

41 It shall be lawful for the Governor by an instrument under his hand to license any person named therein to proceed to any part of *Tasman's Peninsula* or *Slopen Island*, either by land or in any ship, vessel, or boat of any description, for any purpose to be named in such licence.

*Prison Act, 1868.**Legal Procedure.*

42 In any proceedings whether summary or otherwise against any person for any offence under the provisions of this Act, it shall be sufficient to charge and allege that the person by or in respect of whom such offence was committed was at the time a prisoner or person in lawful custody within the meaning of this Act, without charging or alleging any proceedings, or any information, trial, conviction, judgment or sentence, or any pardon or intention of mercy, or signification thereof, or for or against or in any manner relating to such person.

Allegation in proceedings on trial of offences under this Act.

43 Whenever it becomes necessary to prove that any person summarily complained of or charged with any offence under this Act before a Justice or Justices has been previously convicted, either under this Act or otherwise, it shall be sufficient to produce a Certificate or writing in that behalf purporting to be under the hand of the Sheriff and containing the following particulars; that is to say,—the name of the offender; the crime or offence for which such offender is then under sentence; the dates of such sentences, if more than one; and the nature and term or duration of such sentences: And every such Certificate or writing may be produced as aforesaid either before or after the trial of the offender, and the same shall be received as sufficient evidence, without proof of the signature or official character of the person appearing to have signed the same.

Proof in summary proceedings that offender has been previously convicted.

44 Whenever upon the trial of any person or any offender for any offence not punishable summarily under this Act it becomes necessary to prove the conviction of any person, the Registrar or Clerk of the Court, or other Officer having the custody of the Records of the Court where such person was convicted, shall make out and give a Certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every information and conviction for the offence of which such person has been convicted, and of his sentence, which Certificate shall be sufficient evidence of the conviction and sentence, and the Court shall take judicial notice of the signature of such Registrar, Clerk, or Officer.

Proof of offender's conviction and sentence, in proceedings for offences not punishable summarily.

45 Whenever in any case, whether under this Act or otherwise, any question arises whether any person is, or was, at any particular time, a prisoner within the meaning of this Act, it shall be sufficient to prove that such person is, or at the time in question was, a person in fact ordinarily dealt with as a prisoner under this Act without any further or other proof, and the *onus* of proving the contrary shall be on the opposite party.

Proof of person being a prisoner in any proceedings whatsoever, whether under this Act or otherwise.

46 No conviction, order, warrant, or other proceeding made or purporting to be made under the provisions of this Act shall be quashed for want of form, or be removed by *Certiorari* or otherwise into the Supreme Court, and no warrant of commitment shall be held void by reason of any defect therein: Provided, that it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions not to be quashed for want of form, &c.

47 All proceedings for the recovery of any penalty or sum of money made payable by this Act shall be had by and before any Two Justices of the Peace in the mode directed by *The Magistrates Summary Procedure Act*.

Procedure for penalties.
19 Vict. No. 8.

Prison Act, 1868.

Appropriation of penalties.

48 All penalties made payable by this Act shall be paid into the Colonial Treasury and form part of the General Revenue.

Sentences.

Governor empowered to pardon prisoners.

49 It shall be lawful for the Governor, by an Instrument in writing under his hand and the seal of the Colony, to pardon either absolutely or conditionally any prisoner convicted in this Colony.

When Governor extends mercy to a person sentenced to suffer death, the Judge shall make an Order for the imprisonment of such person.

50 Whenever the Governor is pleased to extend mercy to any person convicted of any offence for which he is liable to suffer Death as a Felon, on condition of his being imprisoned for a term, such intention of mercy shall be signified by the Colonial Secretary to a Judge of the Supreme Court, who shall allow to such person the benefit of a conditional pardon, and shall, by an Order in writing under his hand, direct such person to be imprisoned for such term, and such Order shall be entered upon the records of the Court, and such person shall undergo the sentence of imprisonment therein set forth.

Governor may grant remission of sentences.

51 It shall be lawful for the Governor to grant to every prisoner such remission of sentence, not exceeding the proportion of such sentence in the Schedule (4) specified, as the Governor, upon review of the conduct and behaviour of such person whilst undergoing such sentence, deems right.

Persons liable to be sentenced to Transportation to be sentenced to be imprisoned.

52 When any person is convicted before any Court of competent jurisdiction of any offence for which such person is liable to be transported, it shall be lawful for such Court, or any subsequent Session of such Court, to order and adjudge that such person so convicted as aforesaid shall be imprisoned for such term as under this Act may be awarded instead of such transportation.

Terms of imprisonment to be awarded instead of the present terms of transportation.

53 The terms of imprisonment to be awarded instead of the transportation to which any offender would have been liable if this Act had not been passed shall be as follows; that is to say,—

Instead of transportation for Seven years or for a term not exceeding Seven years, imprisonment for any term not exceeding Four years:

Instead of any term of transportation exceeding Seven years and not exceeding Ten years, imprisonment for any term not exceeding Six years:

Instead of any term of transportation exceeding Ten years and not exceeding Fifteen years, imprisonment for any term not exceeding Eight years:

Instead of any term of transportation exceeding Fifteen years, imprisonment for any term not exceeding Ten years:

Instead of transportation for the term of Life, imprisonment for Life, or for any term not exceeding Twenty-one years.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation herein-before mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of imprisonment herein-before mentioned in relation to such terms of transportation.

Prison Act, 1868.

54 When any person is convicted before any Court of competent jurisdiction of any offence for which such person is liable to be sentenced to penal servitude, it shall be lawful for such Court, or any subsequent Session of such Court, to order and adjudge that such person so convicted as aforesaid shall be imprisoned for any term not exceeding the term for which such person might have been sentenced to penal servitude.

Persons liable to be sentenced to penal servitude to be imprisoned.

55 Nothing in this Act contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now by law award or pass on any person other than transportation or penal servitude, but where such other punishment may be awarded at the discretion of the Court instead of transportation or penal servitude, or in addition thereto, the same may be awarded instead of or (as the case may be) in addition to the punishment substituted for transportation or penal servitude under this Act.

Discretion of Courts as to alternative punishment not to be affected.

56 When any person is sentenced to imprisonment for any period not exceeding Two years, it shall be lawful for the Court, Justices, or other Tribunal awarding such sentence to order that the same shall be carried out without hard labour, and the same shall be so carried out accordingly, anything in this Act to the contrary notwithstanding, and in every other case every sentence of imprisonment shall be carried out as a sentence of imprisonment with hard labour.

Imprisonment for Two years and under may be without hard labour.

57 Every prisoner who at the time this Act comes into force is undergoing any sentence or sentences of transportation, penal servitude, or imprisonment, shall be dealt with during the residue of the term of his sentence or sentences as if he had been sentenced to imprisonment under the provisions of this Act, and shall be subject to the same laws, regulations, and penalties as if he had been so sentenced, save and except that no such person shall be kept at hard labour who is not liable to hard labour at the commencement of this Act.

Persons sentenced to transportation or penal servitude, &c. to be dealt with under this Act.

58 Nothing in this Act contained shall in any manner affect Her Majesty's Royal Prerogative of Mercy, or any Prerogative of Mercy vested in the Governor.

Not to affect Royal Prerogative.

Prison Act, 1868.

SCHEDULE.

(1.)

Sect. 3.

ACTS TO BE REPEALED.

<i>Date and Number of Act.</i>	<i>Title.</i>	<i>Extent of Repeal.</i>
8 Geo. 4, No. 4.	An Act for the Transportation of Offenders from <i>Van Diemen's Land</i> .	The whole Act.
9 Geo. 4, No. 1.	An Act for vesting subject to the Regulations and Restrictions hereinafter mentioned in the Principal Superintendent of Convicts for the time being certain of the Powers Authorities and Jurisdictions given to the several Justices of the Peace of this Island in and by an Act of Parliament passed in the Sixth Year of the Reign of His present Majesty intituled <i>An Act for punishing Offences committed by Transports kept to Labour in the Colonies and better regulating the Powers of Justices of the Peace in New South Wales</i> and for extending the Powers Authorities and Jurisdictions so to be vested as aforesaid.	The whole Act.
11 Geo. 4, No. 9.	An Act to facilitate the Prosecution of Servants for Larceny and Embezzlement, and of Persons aiding the Escape of Felons or Offenders under Sentence of Transportation.	Sections 1, 2, and 4.
2 Vict. No. 7.	An Act for regulating Marriages in <i>Van Diemen's Land</i> and its Dependencies.	So much of Section 29 as relates to the Marriage of any person being a Prisoner of the Crown.
7 Vict. No. 7.	An Act to regulate the Hiring of Convicts holding Probation Passes and for other Purposes connected therewith.	The whole Act.
8 Vict. No. 13.	An Act to consolidate and amend the Laws in respect to the Constitution of Courts of General and Quarter Sessions to define the Jurisdiction Powers and Authorities of such Courts and of Justices of the Peace in certain Cases relating to Transported and other Offenders and for other Purposes connected therewith.	Sections 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 32.
8 Vict. No. 14.	An Act for the Control of Transported Offenders and for other Purposes relating thereto.	The whole Act.
8 Vict. No. 16.	An Act for the Regulation of Prisons.	The whole Act.
8 Vict. No. 19.	An Act to render more effectual the Punishment of Hard Labour.	Sections 1 and 4.
11 Vict. No. 5.	An Act to amend the Act of this Island, intituled <i>An Act for the Regulation of Prisons</i> .	The whole Act.
11 Vict. No. 6.	An Act to amend the Act of this Island, intituled <i>An Act to consolidate and amend the Laws in respect to the Constitution of Courts of General and Quarter Sessions to define the Jurisdiction Powers and Authorities of such Courts and of Justices of the Peace in certain Cases relating to Transported and other Offenders and for other Purposes connected therewith</i> .	The whole Act.
16 Vict. No. 20.	An Act to empower the Lieutenant-Governor of this Island to discontinue certain existing Gaols and Houses of Correction.	The whole Act.

Prison Act, 1868.

<i>Date and Number of Act.</i>	<i>Title.</i>	<i>Extent of Repeal.</i>
17 Vict. No. 3.	An Act to make temporary provision for the better Confinement and Classification of Prisoners imprisoned in the Gaols at <i>Hobart Town</i> and <i>Launceston</i> .	The whole Act.
19 Vict. No. 1.	An Act to enable the Governor to establish Houses of Correction under the Control of the Sheriff.	The whole Act.
19 Vict. No. 3.	An Act to substitute other Punishment in lieu of Transportation.	The whole Act.
19 Vict. No. 6.	An Act to make provision for the better Control and Disposal of Offenders under Sentence of Imprisonment.	The whole Act.
25 Vict. No. 7.	An Act to regulate the Punishment of Offences.	Sections 3, 4, 5, and Schedule.
26 Vict. Sess. 2, No. 3.	An Act to make permanent <i>An Act to make temporary provision for the better Confinement and Classification of Prisoners imprisoned in the Gaols at Hobart Town and Launceston.</i>	The whole Act.

(2.)

Sect. 33.

A B., a Prisoner under sentence of Imprisonment for Felony, (*or as the case may be*), is charged under the provisions of "The Prison Act, 1868," before me, one of Her Majesty's Justices of the Peace, upon the complaint of *C. D.*, with [*here state shortly the offence charged.*]

The prisoner pleads [*Guilty or Not Guilty*].

Now I the said Justice, having inquired into the said charge, do find that the said *A. B.* is [*Guilty or Not Guilty*]. [*If guilty proceed as follows.*]

And I do sentence the said *A. B.* for such offence to [*here state the sentence.*]

Dated at this day of 186 .

J. P.

[*To be signed by the Justice adjudicating.*]

Prison Act, 1868.

Sect. 36.

(3.)

M. N., a Prisoner under sentence of Imprisonment for a period exceeding Three years, is charged before us, Two of Her Majesty's Justices of the Peace, under the provisions of "The Prison Act, 1868," upon the complaint of A. B. with *[state shortly in substance the offence charged.]*

The prisoner pleads *[Guilty or Not Guilty.]*

Now we, the said Justices, having enquired into the said charge, do find that the said M.N. is *[Guilty or Not Guilty.]* *[If Guilty, proceed as follows.]* And we do sentence the said M.N. for such offence to *[here state the sentence].*

Remarks *[add any remarks the case may appear to call for.]*

Dated at this day of 18

J. K.
L. M.

Justices of the Peace.

Sect. 51.

(4.)

<i>Sentence— Penal Servitude.</i>	<i>Proportion to be undergone.</i>	<i>Proportion which may be remitted in case of Good Conduct.</i>
3 years.....	Five-sixths—2 years 6 months.....	One-sixth.
4 ".....	Four-fifths—3 years 3 months.....	One-fifth.
5 ".....	Ditto—4 years.....	Ditto.
6 ".....	Three-fourths—4 years 6 months.....	One-fourth.
7 ".....	Ditto—5 years 3 months.....	Ditto.
8 ".....	Ditto—6 years.....	Ditto.
10 ".....	Ditto—7 years 6 months.....	Ditto.
12 ".....	Ditto—9 years.....	Ditto.
15 " and upwards..	Two-thirds.....	One-third.

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